

INTERNATIONAL ORGANIZATION IN EUROPEAN AIR TRANSPORT

BY

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WITH A FOREWORD BY

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TO MY FATHER
GUY TOMBS

FOREWORD

AT a period when the difficulty of securing united political action among the states which form the society of nations is so apparent, it is encouraging to realize that progress is being made in the organization of the international society to permit its individual members to carry on their business. The international society is organized into sovereign states, but those states have recognized, particularly in the field of international transportation, that they must act in the interests of the world society if they are to serve best the interests of their own nationals who form part of that society. This is notably true with such organizations as the Universal Postal Union, the International Railway Union and many others; and Dr. Tombs has in the present volume brought out the complexities under which, in this new method of transportation by air, the international society is endeavoring to organize. His study shows clearly the strong nationalist temper of the individual states, but it also indicates how that temper has been curbed to meet the urgent needs of the international society.

The book shows clearly the danger of war as the principal deterrent factor to a reasonable organization of air transport on the European continent, but the extent to which that organization has been accomplished in the troubled years since the Great War is an earnest of the power of the demand on the part of the people on that continent for a better ordering of their relationships on a continent-wide basis.

Dr. Tombs is peculiarly competent to present the picture of the international organization of the air, because of his long experience as a member of the Communica-

tions and Transit Section of the League of Nations and his wide acquaintanceship with the men who are chiefly responsible for the progress which has been made.

JOSEPH P. CHAMBERLAIN

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JANUARY, 1936

PREFACE

THIS study was undertaken by the author, who is a Member of the Communications and Transit Section of the League of Nations Secretariat, with the permission of the Secretary-General of the League. Its preparation was of a private character, in no way whatsoever connected with the author's official duties.

The author wishes to thank the Social Science Research Council for a grant which, in part, made possible the writing of this book, and the Carnegie Endowment for International Peace and Columbia University Press for jointly undertaking its publication. He desires to express his grateful appreciation of all those who in one way or another have aided him. While realizing how difficult it is to single out particular names, he mentions here Professor Joseph P. Chamberlain and Professor James T. Shotwell of Columbia University; Professor William E. Rappard, Director of the Graduate Institute of International Studies, Geneva, and Professor Pitman B. Potter, of the same institute; Jonkeer van den Berch van Heemstede, General Manager of the International Air Traffic Association, The Hague; Monsieur Henri Bouché, Editor of *L'Aéronautique* and Vice-Chairman of Air France, Paris; Dr. M. Molfese, Inspector-General, General Directorate of Civil Personnel and General Affairs, Italian Air Ministry, Rome; Dr. Albert Roper, Secretary-General of the International Commission for Air Navigation, Paris; Mrs. W. M. White, Geneva; Miss Margery Grant, Miss Anna Russell and Miss Mariana Smith of Kent Hall, Columbia University.

This Preface would be incomplete if it did not contain a brief tribute to a distinguished international diplomat

and civil servant, the late Robert Haas, the virtual creator of the League's Organisation for Communications and Transit, who encouraged the writing of this book and who was so kind as to read the manuscript.

GENEVA

LAURENCE C. TOMBS

JANUARY, 1936

INTRODUCTION

AT the very outset of the Conference for the Reduction and Limitation of Armaments it was recognized that the problem of the air was one which involved both what was officially known as "civil aviation" and what was known as "military aviation." Especially in the Air Commission of the Conference, which met in the first half of 1932, and in the Air Committee set up in the early spring of the following year, numerous proposals to overcome, or seriously to diminish, the military potentialities of "civil aviation" were either formally presented by delegations or thrown out during the prolonged discussions. Of all these proposals, that which aroused the greatest interest and the most marked differences of opinion was the "internationalization of civil aviation," and there were several varieties of this particular proposal. Often linked with it was the idea of the establishment of an "international air police force."

It is possible, even probable, that it was not always realized by delegations at the Conference, or by the governments and public at home, that from the year 1919, the very first year of civil air transport, a process of internationalization had begun, for flight is, by its very nature, international. This process, in various spheres, has advanced slowly but steadily ever since.

The purpose of this book is not to support the idea of the internationalization of civil aviation, or any other policy. It is rather to indicate what are the existing elements of international organization in European air transport, how such elements have come about in the face of national reactions, and what is their real significance.

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ABBREVIATIONS

Certain organizations referred to in the text by their initials: ¹

- A.I.R. Air International Register
- C.A.I. Initials of the French title (Conférence Aéronautique Internationale) of the International Air Conference
- C.A.M. Initials of the French title (Conférence Aéronautique Méditerranéenne) of the Mediterranean Air Conference
- C.I.N.A. Initials of the French title (Commission Internationale de Navigation Aérienne) of the International Commission for Air Navigation and pronounced, in the French manner, "Cina." This organization is also, less frequently, referred to (but not in this text) as the "I.C.A.N." It is concerned with public air law. The C.I.N.A. should not be confused with the C.I.D.N.A. (Compagnie Internationale de Navigation Aérienne), now part of Air France. Occasionally the body (never constituted) which was to have administered the now-inoperative Ibero-American Air Convention has been referred to as the "C.I.A.N.A." (but not in this text).
- C.I.T.E.J.A. Comité International Technique d'Experts Juridiques Aériens. These initials, pronounced in the French manner, "Citéja," should not be confused with the less frequently used "C.J.I.A.," standing for another and less important body—Comité Juridique International de l'Aviation. The C.I.T.E.J.A. is concerned with private air law.

¹ It is not considered necessary to reproduce here the initials occasionally used in the text to represent air transport companies, save for the C.I.D.N.A. (see under "C.I.N.A.").

| | |
|----------|--|
| F.A.I. | Initials of the French title (Fédération Aéronautique Internationale) of the International Aeronautical Federation |
| I.A.T.A. | International Air Traffic Association |

INTERNATIONAL ORGANIZATION IN
EUROPEAN AIR TRANSPORT

I

HISTORICAL APPROACH: RELATIONS BETWEEN CIVIL AND MILITARY AVIATION

BECAUSE national military considerations have so decisively influenced the development and control of air navigation in all its branches, it would be undesirable to minimize such considerations in setting forth the elements of international organization in European air transport.¹ These very elements have grown with difficulty inside a framework which is essentially political and military. Because the present volume is concerned with international organization, it will be advisable to dispose as far as possible in the first chapter of the question of the relationship between civil and military aviation. It is perhaps obvious that, in the succeeding chapters, it will seldom be possible altogether to lose sight of the particular influences which dominate air transport; no other form of communications is similarly dominated to the same degree.

The deliberations of the Conference for the Reduction

¹ "Nations have tended to regard flight as a prerogative of war." Maj.-Gen. Rt. Hon. Sir F. H. Sykes, Controller-General of Civil Aviation and former Chief of the Air Staff, *Aviation in Peace and War*, London, 1922, p. 19.

"I would . . . point out at the very beginning of my remarks that the civil and military aspects are inextricably connected, and that the development of imperial air lines is a vital factor in Empire defence." Rt. Hon. Sir Samuel Hoare, Secretary of State for Air, *The Approach towards a System of Imperial Air Communications*, Imperial Conference, London, 1926, p. 2.

(Translation) "National defence is, and will long remain, the chief purpose of aviation . . . no matter how important, and even indispensable, commercial aviation should become, it must never lose sight of the necessities of national defence." Gen. A. Niessel, Inspector-General of Aeronautics, *La Maîtrise de l'air*, Paris, 1928, p. 173.

and Limitation of Armaments conclusively demonstrate, as never before, the intimate relationship between civil and military aviation and the necessity of a greatly increased measure of international organization in the air, not only for reasons of commerce and of human intercourse, but, infinitely more important, for the security and even the preservation of European civilization.²

The following events in the history of aeronautics from 1783 to 1914 suggest how military considerations weighed in the formative period.

1783. Pilâtre de Rozier effected the first human ascent in a captive fire balloon made by the Montgolfier brothers (all three French). By the end of 1783, the evolution of the free balloon had, in all essentials, reached its present form. Between 1783 and 1897 little real progress was made in the evolution of the airship, chiefly because of the absence of suitable engines.

1785. Blanchard (French) crossed the English Channel in a balloon.

1794. First military use of aeronautics by a French captive balloon at the siege of Maubeuge. Balloons were employed spasmodically in several campaigns during the first half of the nineteenth century; e.g.: sieges of Antwerp (1815), Algiers (1830), Milan (1848), and Venice (1849).

1809. Sir George Cayley (English) established the principle of the aeroplane.

1852. Giffard (French) flew the first power-driven dirigible.

1870. Sixty-six balloons effected the first air mail between besieged Paris and the area outside.

² See *Records of the Conference for the Reduction and Limitation of Armaments* and *Minutes of the Air Commission and Air Committee* of the Conference.

1884. Charles Renard and Krebs (both French), in their dirigible, made the first directed flight. From this year, balloons were regularly used by the British, French, and Italians in their colonial wars. By the end of the century, practically all European states had set up balloon schools.
1889. First International Aeronautical Congress, Paris.
- 1891-96. The gliding experiments of Lilienthal (German) anticipated the aeroplane.
1899. The following declaration was adopted at the first Hague Conference: "The Contracting Powers agree for a term of five years to forbid the discharge of projectiles and explosives from balloons or by other new methods of similar nature." This declaration was not renewed at the second Hague Conference, 1907.
1900. First flights by "Zeppelin No. 1."
1903. Orville and Wilbur Wright (Americans) made the first flights in an aeroplane at Kitty Hawk, N. C. The modern aeroplane differs in no essential feature from their first machine, the remarkable subsequent development being attributed to the application of aerodynamic research to aeroplane construction, to the increase in the power and efficiency of gasoline engines, and to the striking reduction in the weight of the engines for a given power output.
1906. First aeroplane flight in Europe effected by Santos-Dumont (Brazilian).
1909. Blériot (French) flew the English Channel in an aeroplane. This year, military aviation, as such, was first established in France.
1910. Failure to effect an international convention on air navigation, Paris.
- 1910-14. Earliest form of experimental air transport effected by Zeppelins (34,000 passengers carried).

1911-13. Aeroplanes and airships were first used in an armed conflict during the Italo-Turkish War. Aircraft were also employed in the Balkan Wars. By the latter year, military aviation was on a firm footing in Austria-Hungary, France, Germany, Great Britain, Italy, and Russia.

BEFORE THE GREAT WAR

In 1889, long before the advent of the aeroplane, only a few timid dirigible flights having been made, the first International Aeronautical Congress, meeting at Paris upon the invitation of the French government,³ charged a permanent international aeronautical commission to pursue the study of certain legal problems, including the use of dirigibles in war. Problems of air law were henceforth studied by distinguished jurists and at numerous international conferences.⁴ These studies were especially stimulated by the rapid development of the aeroplane and the airship in the first fourteen years of the present century.

³ The part played by Frenchmen and successive French governments in many branches of aeronautics, from the invention of the balloon and the dirigible to the plans for the internationalization of civil aviation and the establishment of an international air police force, is a subject in itself worthy of study. The headquarters of the following international air organizations are at Paris: International Commission for Air Navigation (C.I.N.A.); Comité International Technique d'Experts Juridiques Aériens (C.I.T.E.J.A.); International Aeronautical Federation (F.A.I.); Air International Register (A.I.R.); and Comité Juridique International de l'Aviation (C.J.I.A.). The International Office of Public Hygiene and the International Chamber of Commerce, which also deal with certain air questions, have their seats at Paris.

⁴ (1) International Aeronautical Congresses, Paris, 1889 and 1900; Milan, 1906; Brussels, 1907; Nancy, 1909; Turin, 1911. (2) Institut de Droit International, Neuchâtel, 1900; Brussels, 1902; Ghent, 1906; Florence, 1908; Paris, 1910; Madrid, 1911. (3) International Law Association, Paris, 1912; Madrid, 1913. (4) Congrès Juridique d'Aviation, Verona, 1910. (5) Comité Juridique International de l'Aviation, Paris, 1911; Geneva, 1912; Frankfurt, 1913.

In prewar years, there were two opposed schools in the matter of air law: one, led by Fauchille and other French jurists, conceived an international charter of the freedom of the air; the other, supported largely by British opinion, advocated the doctrine of state sovereignty in the air space above national territories. The object of the International Conference on Air Navigation, convened by the French government at Paris in 1910, was actually to draw up an international convention regulating air navigation. National air regulations were still non-existent. The participating states⁵ proposed to establish their own regulations thereafter, in accordance with the international provisions to be laid down by the Conference. There was a possibility that the air law of the individual countries would represent the application, according to the circumstances, of one general law. The international status of air transport would thus, eventually, have been essentially different from that of any other means of transport. Unfortunately, the Conference found itself unable to adopt the draft or to agree upon the amendments to be introduced. The principle of the sovereignty of states in the air space above their territory, a principle condemned by most jurists up to that time, gave rise to profound divergencies of opinion. The Conference adjourned without effecting an agreement. Several unsuccessful attempts were made to reconvene it; meanwhile, the danger of a European war grew more acute.

By this time, it was abundantly clear that, in Western

⁵ Austria-Hungary, Belgium, Bulgaria, Denmark, France, Germany, Great Britain, Italy, Monaco, the Netherlands, Portugal, Roumania, Russia, Serbia, Spain, Sweden, Switzerland, and Turkey. The text of the draft Paris Convention of 1910 is reproduced by Albert Roper, Secretary-General of the C.I.N.A., in *La Convention Internationale du 13 octobre 1919*, Paris, 1930, pp. 212-225.

Europe at least, flight could not be confined within the boundaries of a single state. The necessity to secure preliminary authorization before effecting a flight over another country was already felt to be restrictive. France and Germany were the first states to enter into a bilateral agreement on this subject (July, 1913). It was expressly stipulated that this partial agreement would apply as a temporary measure pending an international convention between a greater number of states. The agreement contained a number of restrictions on the free circulation of aircraft, including the setting aside of certain prohibited zones.⁶ On the eve of the outbreak of war in 1914, air legislation, still in an embryonic state, tended to be circumscribed by purely national considerations,⁷ which all too frequently meant "military considerations." By 1913, military aviation was well established in Europe.

THE GREAT WAR

The early inventive, pioneering period of aeronautics, originating in 1783, came to an abrupt and significant close in August, 1914, with the Great War which was to be the real progenitor of international air transport. Up to 1914, aircraft were rarely seen in the air. A new means of communication, imperfect and still largely untried, save for experimental purposes, was hastily adapted and forced into use as a new weapon. Even in the last months of the War it was never more than an auxiliary arm. Its development prior to 1914, however, was slight compared with that impelled by the War.⁸ Although air-

⁶ The text of this agreement is reproduced in Roper, *op. cit.*, pp. 246-251.

⁷ Between 1910 and 1914, the following states established tentative national air laws and regulations: Austria-Hungary, France, Germany, Great Britain, Italy, and Serbia.

⁸ This may be seen by a glance at certain British comparative figures over a period of eight years. By November, 1910, only 22

craft were employed almost exclusively for destructive purposes, the war indicated some of their uses as a means of transport in times of peace. Had it not been for the Great War, the development of aircraft would have been very much slower and along different and more wholesome lines. From the technical point of view, perhaps the most significant progress was that reached in engine construction, with accompanying influence upon the speed, range, height, and useful load. By November, 1918, engines were unquestionably greatly superior, both as to reliability and performance, and much lighter in weight per horse power, than those of August, 1914. Marked strides were made in the construction and operation of airships, notably Zeppelins. The whole course of air transport, and its existing international organization, bears the imprint of the Great War and its aftermath. The degree of economic return, comfort and safety found today may be traced to the mass production forced during the War, regardless of price or risk.⁹ The air, with its limitless pos-

pilots' certificates had been issued in Great Britain. Civil aviation practically did not exist. In August, 1914, the British flying corps consisted of 1,844 officers and men, and 7 squadrons containing some 150 machines fit for warlike purposes. By November, 1918, the Air Force had expanded to nearly 300,000 officers and men, and 201 squadrons consisting of 22,000 machines. Sykes, *op. cit.*, pp. 17, 43-44.

⁹ There were only 63 British and 156 French aeroplanes on the Western Front and 258 German machines on all fronts in August, 1914. From the model of a single French aeroplane, 7,300 identical aeroplanes were built; from the model of a single French engine, 20,300 identical engines were turned out. Some 200,000 aircraft and 250,000 engines were constructed in all camps between 1914-18. To possess 3,608 machines in the field at the Armistice, France had had to turn out 41,500 aircraft and 64,000 engines, apart from 9,500 aircraft and 28,000 engines furnished to Allies. Destruction and deterioration of French aircraft in the last phase of the War were so swift as to remove from action more than 50 per cent of the material placed there within one month. Charles Dollfus and Henri Bouché, *Histoire de l'aéronautique*, Paris, 1932, pp. 271, 352.

sibilities for good and evil, had at last opened out to man.

Two main ideas relating to aviation, ideas which were perfectly intelligible but scarcely complementary, took root at Versailles. The rapidly increasing power and range of the belligerent air forces, especially during the last weeks of the War, convinced the Allies that military aviation must be retained for themselves as a most useful weapon, but must be forbidden to the ex-enemy states. It was already evident that aircraft would play some part as a new means of transport in peace time; three months after the signing of the Armistice, the first air transport companies had begun to operate in France and Germany. There was a genuine and widespread conviction of the necessity of laying down a basis of public air law and of regularizing the conditions under which aircraft could be employed in international commerce. The International Convention relating to the Regulation of Aerial Navigation, dated October 13, 1919, which will be discussed in Chapter III, sprang from the Aeronautical Commission of the Peace Conference.

THE AIR CLAUSES OF THE PEACE TREATIES AND THEIR CONSEQUENCES

The peace treaties with Germany (Versailles, June 28, 1919), Austria (Saint-Germain-en-Laye, September 10, 1919), Bulgaria (Neuilly, November 27, 1919), Hungary (Trianon, June 4, 1920), and Turkey (Sèvres, August 10, 1920),¹⁰ contained air clauses, all of which were

¹⁰ The air clauses of the Treaty of Sèvres, which never became effective, were not reproduced in the Treaty of Lausanne (July 23, 1923), so that Turkey, treated differently in this respect from the other ex-enemy states, was permitted to possess both civil and military aviation. Articles 1 and 2 of the Convention relative to the Régime of the Straits (Lausanne, July 24, 1923), entered into between the British Empire, Bulgaria, France, Greece, Italy, Japan, Roumania, Turkey, U.S.S.R., and Yugoslavia, to ensure in the Straits

essentially the same.¹¹ In each of the treaties, there are two groups of clauses. Articles 198-201 of the Treaty of Versailles contain the military and naval air terms, and Articles 202-210 provide for the setting up of an Inter-Allied Commission of Control. Articles 313-320 gave to all aircraft of the Allied Powers, up to January 1, 1923, the same privileges in Germany as those possessed by German nationals. Article 319 required that all German aircraft flying over German territory should observe the same traffic rules as those laid down in the Convention of 1919, although Germany had no part in its elaboration; also, the Convention was not effective until July, 1922. By decision of the Conference of Ambassadors (December 15, 1920), based on Articles 42 and 43 of the Treaty of Versailles, Germany was forbidden to maintain aerodromes within the occupied and demilitarized areas. The application of the air clauses of the Treaty of Versailles gave rise to many difficulties. It was only on February 5, 1922, that the Conference of Ambassadors announced that Germany had fully executed the terms of Article

freedom of transit and navigation between the Mediterranean and the Black Seas for all nations, read as follows:

"Art. 1. The High Contracting Parties agree to recognise and declare the principle of freedom of transit and of navigation by sea and by air in the Strait of the Dardanelles, the Sea of Marmora and the Bosphorus. . . .

"Art. 2. The transit and navigation of commercial vessels and aircraft, and of war vessels and aircraft in the Straits in time of peace and in time of war shall henceforth be regulated by the provisions of the attached Annex." *League of Nations Treaty Series*, XXVIII, p. 119.

The Régime of the Straits is at present administered by a Commission having its seat at Istanbul, under the auspices of the League of Nations, and composed of representatives of all the above states, excepting the last two.

¹¹ Treaties of Versailles (Arts. 198-210, 313-320), Saint-Germain-en-Laye (Arts. 144-155, 276-283), Neuilly (Arts. 89-100, 204-211), Trianon (Arts. 128-139, 260-267).

202 of the Treaty (delivery of aeronautical material).¹²

The controversy as to what is the relationship between civil and military aviation arose from the consequences of the military air terms of the Treaty of Versailles. The Treaty itself did not limit German civil aviation, even though the Aeronautical Commission of the Peace Conference had decided that civil aviation was easily convertible to warlike purposes. The Conference of Ambassadors decided to restrict the number and performance of all types of German aircraft by imposing the drastic "Nine Rules," which went into force on May 5, 1922.¹³ The Germans endeavored to refine their technique in order to circumvent the restrictions as far as possible.

¹² Germany's aeronautical equipment, including a good deal claimed by Germany as "civil," had been disposed of as follows: of 34,616 engines, 30,190 had either been delivered to the Allies or destroyed; of 21,386 aeroplanes, 16,601 had been delivered or destroyed; 16 airships had been handed over or destroyed; and practically all aerodromes had been destroyed. Charles Lortsch, "La Politique aérienne allemande depuis le Traité de Versailles," *Revue Juridique Internationale de la Locomotion Aérienne*, Paris, 1927, p. 138.

M. Nadolny, chief German delegate at the Disarmament Conference, on May 27, 1933, stated that "fourteen years had passed since Germany had destroyed all her air material: 15,700 aeroplanes, 27,000 engines and 547 hangars. This was to have been the first step towards general disarmament . . . the other nations were to follow that example, also abolishing their air armaments." *Records of the Conference for the Reduction and Limitation of Armaments*, Series B. *Minutes of the General Commission*, Vol. II, p. 530.

¹³ Germany was prohibited from possessing aircraft capable of attaining more than a strictly defined and limited speed, endurance, and climbing power, or of carrying a useful load exceeding 1,320 pounds, including the pilot, mechanic, and instruments. Rule 1 read as follows: "All one-seater aeroplanes having a motive power greater than 60 H.P. will be considered as military, hence war material." The Nine Rules are given by Brig.-Gen. Rt. Hon. Lord Thomson, Secretary of State for Air, in *Air Facts and Problems*, London, 1927, pp. 176-178. The maximum useful load of the German flying boat "Do-X" is 24,800 pounds, and its twelve engines total 6,000 H.P. The total available pay load (weight of machine available for passengers, freight and mail) of the Junkers G-38 is 8,818 pounds, and its four engines total 3,200 H.P.

Leading aircraft manufacturers even established themselves abroad and turned out both military aircraft, as such, and civil aircraft.¹⁴

From January 1, 1923, Germany possessed and exercised sovereign rights in the air over unoccupied and non-demilitarized German territory (Art. 320). Of Allied aircraft, only military machines still retained the right to fly over and land on German territory (Art. 200). The occupation of the Ruhr in the early part of 1923 brought to an end negotiations looking toward Germany's adherence to the Paris Convention. By this time, Germany had entered into bilateral air agreements with the Free City of Danzig, Denmark, the Netherlands, and Switzerland. Germany decreed that Allied civil aircraft must secure preliminary authorization before flying over or landing in Germany. This rendered impossible normal commercial air relations between the former belligerents.¹⁵

On June 24, 1925, the Nine Rules were revised so as to reduce somewhat the restrictions on the construction of aircraft, although a number of additional restrictions of a different character were imposed. The Inter-Allied Committee of Guarantee, which had replaced the Com-

¹⁴ Dornier went to Italy and Switzerland, Fokker to the Netherlands and the United States of America, Heinkel to Sweden, Junkers to the U.S.S.R., and Rohrbach to Denmark. The air and colonial clauses of the Treaty of Versailles doubtless encouraged German air transport undertakings in China, Iran (the Shah's government, as from March, 1935, changed the name of Persia to "Iran"), South America, Spain, Sweden, and the U.S.S.R.

¹⁵ Nevertheless, the Franco-Roumaine line, effecting the Strasbourg-Prague service, continued to fly over German territory. Some dozen aircraft, obliged to make forced landings on German soil, were seized by the German authorities and branded as "military aircraft," according to the Allied criterion of the Nine Rules. From February, 1925, the French company used a roundabout and difficult mountainous route via Zürich, the Tyrol, and Innsbruck, until the conclusion of the Franco-German air agreement in May, 1926.

mission of Control, was authorized to establish the limits of the "normal requirements of German air navigation," and to see that the number of aircraft engines and pilots and the amount of aeronautical equipment did not exceed such limits. German import and export of aircraft and material, and even the plans thereof, were henceforth closely scrutinized by the Committee of Guarantee.

On May 26, 1926, more than six years after the entry into force of the Treaty of Versailles, an agreement was reached between Germany on the one hand, and Belgium, France, Great Britain, Italy, and Japan, on the other, with a view to entrusting Germany with the application of Article 198 of the Treaty.¹⁶ The new régime went into force on August 9, 1926. Military aviation remained forbidden to Germany. The restrictions on German civil flight within occupied and demilitarized territories were lifted. In the unoccupied demilitarized zone, Germany was permitted to establish four airports and twelve landing grounds.¹⁷ It was laid down that "the German Government shall see that German civil aviation is kept within the limits of normal development . . . in regard to commercial aviation, which shall not be subsidised in excess of these requirements." The German government should make dependent upon a special license issued by it the construction or importation, for the purpose of taking part in certain international competitions, of aircraft having the technical characteristics of modern fighting aeroplanes. No German authorities

¹⁶ *League of Nations Treaty Series*, LVIII, 332-374.

¹⁷ On February 28, 1935, on the eve of the reinstallation in the Saar Territory of the Government of the Reich, the French and German governments agreed that "to the four airports already provided for in the demilitarised area will be added an airport at Saarbrücken. A landing-ground for civil aviation will be provided at Saarlouis, bringing the total of landing-grounds in the demilitarised area up to 17." *The Times*, London, March 29, 1935.

could subsidize non-commercial aviation. All military instruction and training in aviation were prohibited. A strictly limited number of the Reichswehr and police might hold pilots' certificates. The powers of control passed, according to Article 213 of the Treaty of Versailles, to the League of Nations. These powers of control have not been exercised by the League.

The agreement led to the rapid establishment of normal air transport relations between the former belligerents, although Germany did not become a party to the Paris Convention.¹⁸ Similar agreements were entered into by the Allied Powers with Bulgaria on June 2, 1927, with Hungary on July 12, 1927, and with Austria on October 27, 1927, military aviation being forbidden to these ex-enemy states.

In execution of the treaties, Austria, Bulgaria, Germany, and Hungary undertook to place at the disposal of the League of Nations aviation registration lists, kept up to date and covering the following points: aircraft factories; aircraft and engines completed; pilots and cadet pilots; organizations operating air transport lines; organizations, companies or institutes engaged in aviation or using aircraft; all other owners of aircraft. Further, Germany undertook to place at the disposal of the League a list kept up to date of pilots and cadet pilots in motorless flying.¹⁹

¹⁸ See *infra*, Chapters III, IV, and V, for an account of Germany's position regarding, respectively, the Paris Convention, the C.I.N.A., and bilateral air agreements.

¹⁹ *The [London] Times* on March 12, 1935, published the following:

"The German Air Force has now come officially into existence. Its existence, in fact, has been obvious for a long time.

"Only a few days ago an imposing air formation, consisting of bombers escorted by fighters, cruised demonstratively over the centre of Berlin. As was reported last year, nobody with eyes, and espe-

The air relations between Germany and the Allied Powers suggest that (1) there is an unmistakably close connection between civil and military aviation; (2) it is impossible to "control" military aviation effectively without also "controlling" civil aviation; (3) it is difficult to "control" civil aviation without hampering its normal progress, especially that relating to air transport; (4) lacking an effective international air authority to enforce a special air régime, ways will always be found ultimately to escape the effects of such a régime; (5) there is a real and urgent need for international organization in the air.

THE DISARMAMENT CONFERENCE

Because of the prolonged, labyrinthine, and frequently inconclusive discussions of the problem of civil and military aviation since the year 1926, it is considered that it would be going beyond the scope of this volume if more than an indication were given of such discussions. The form of composite notes will, in part, be followed.

1926. Sub-Commission A of the Preparatory Commission for the Disarmament Conference, while unable to make a unanimous report on air armaments, agreed, by a large majority, that civil aviation personnel and material "constitute possible war armaments of very high value on account of the ease and rapidity with which they can in most cases be utilised for certain

cially ears, could have any doubt about the existence of an air force, and in diplomatic circles the formal move into the open has of late been expected at any time. The reply to the Franco-British Air Convention proposal, in which the German Government expressed their readiness in principle 'to employ their aerial forces as a deterrent against disturbance of the peace' was a plain enough hint.

"The official existence of the Air Force dates, it seems, from March 1st. The officers have been commissioned as from that date with military rank. . . . Some foreign diplomatic missions in Berlin are understood to have been informed of this change."

military purposes.”²⁰ This confirmed the conclusions of three international committees of air experts, arrived at independently, meeting at Paris, Geneva, and Washington between 1919 and 1922.

1927. Committee of Experts on Civil Aviation (appointed by Sub-Commission B) conservatively decided that “every effort should be directed towards differentiating more and more clearly between civil and military aviation; in this way, civil machines will become capable of a maximum economic return and will become less and less useful for military purposes.”²¹

1930. In the Draft Convention adopted by the Preparatory Commission for the Disarmament Conference, the influence of the opinion of the Committee of Experts on Civil Aviation may be seen in Art. 28, par. 1: “The High Contracting Parties shall refrain from prescribing the embodiment of military features in the construction of civil aviation material, so that this material may be constructed for purely civil purposes.”²²

1932 (February 5). The first French plan in the Disarmament Conference contained a series of measures relating to “this war arm whose character is the most specifically offensive and the most threatening to civilians,” including provision for the internationalization of civil air transport under a régime organized by the League and the establishment of an international air police force under the League.²³ Ten weeks before the announcement of the French plan in the Disarmament Conference, *Politique* (Paris, November 15, 1931) published “Internationalisation des services publics de transport aérien. Organisation de l’Assistance Mutuelle Aérienne. Limitation des Armements,” with an intro-

²⁰ Doc. C.739.M.278, 1926, IX, p. iii.

²² Doc. C.687.M.288, 1930, IX, p. 14.

²¹ Doc. C.P.D.39, p. 4.

²³ Docs. Conf. D.56 and 115.

duction by Pierre Denis beginning: (translation) "This memorandum . . . has been prepared by a group of persons of various political opinions, several of whom play no part in politics and do not belong to any party."

1932 (July 23). Extract from the resolution adopted by the General Commission (Germany and the U.S.S.R. voted against this resolution; the following states abstained: Afghanistan, Albania, Austria, Bulgaria, China, Hungary, Italy, and Turkey):

I. *Air Forces*

The Conference, deeply impressed with the danger overhanging civilisation from bombardment from the air in the event of future conflict, and determined to take all practicable measures to provide against this danger, records at this stage of its work the following conclusions:

1. Air attack against the civilian population shall be absolutely prohibited;
2. The High Contracting Parties shall agree as between themselves that all bombardment from the air shall be abolished, subject to agreement with regard to measures to be adopted for the purpose of rendering effective the observance of this rule.

These measures should include the following:

- (a) There shall be effected a limitation by number and a restriction by characteristics of military aircraft;
- (b) Civil aircraft shall be submitted to regulation and full publicity. Further, civil aircraft not conforming to the specified limitations shall be subjected to an international régime (except for certain regions where such a régime is not suitable) such as to prevent effectively the misuse of such civil aircraft.²⁴

1932 (November 14). The original French plan was further developed. (Conf. D. 146.)

²⁴ Doc. Conf. D/C. G. 31-1. (It will be noticed that "civil aircraft" are included under the title "Air Forces.")

1933 (February 20). The United Kingdom delegation, repeating its declaration of November 17, 1932,

was prepared to subscribe to universal acceptance of the abolition of naval and military aircraft and of air bombing, except for police purposes (in outlying places), provided only that there can be devised an effective scheme for the international control of civil aviation which will prevent all possibility of the misuse of civil aircraft for military purposes.

According to the Minutes of the Air Committee which sat in February and March, 1933,²⁵ it would appear that the delegations of the following countries in the Air Committee were prepared, in order to make possible complete national air disarmament, to adopt in one way or another the French plan to internationalize civil aviation and establish an international air police force under the League of Nations: Belgium, Czechoslovakia, Norway, Poland, Spain, Sweden, and Yugoslavia. The Turkish delegate favoured internationalization only.²⁶

The following extracts from speeches give some indication of the opinions of certain delegations.

The U.S.S.R. delegate, M. Dovgalevsky, speaking on February 22, 1933:

It did not seem to be an easy matter to reach unanimity on the principle itself of the internationalisation of civil aviation. It was to be feared then that far greater, if not insuperable, difficulties would arise when the time came to pass from principles to technical details. Furthermore, even if—as he thought was improbable—the Conference eventu-

²⁵ An Air Commission had had prolonged discussions prior to the adoption of the resolution of July 23, 1932.

²⁶ Recalling certain declarations made in the Disarmament Conference in 1932 and 1933 by extra-European delegations (e.g., United States, Argentine, Canadian, and Japanese) it would appear that support for the internationalization of civil aviation and an international air police force was virtually confined to certain European delegations.

ally succeeded in eliminating all difficulties and agreeing on a system of internationalised civil aviation, it might still be faced by another difficulty, the creation of an international air police.

The Italian delegate, M. Fier, on February 27:

We declare that we are opposed to the internationalisation of civil aviation and are convinced that the measures of supervision suggested by us, together with the other measures proposed in other spheres, are sufficient to bring about and ensure a certain degree of limitation and reduction in the domain of military aviation.

The United Kingdom delegate, Sir Philip Sassoon, on March 1:

. . . one of the conclusions which has so far been come to was that, if air forces were to be abolished, an international organisation was probably essential. It was now for them to discuss internationalisation as a preliminary step towards the possibility of the abolition of military and naval aviation.

The German delegate, M. Brandenburg, on March 2:

As regards the internationalisation of civil aviation, the discussions on which they were engaged would show whether such a measure was necessary or not; at all events, the German Government was prepared to give its support to any determined and effective measure calculated to prevent the use of civil aviation for any military purposes.

It is interesting to compare M. Brandenburg's statement with one made by the chief German delegate, M. Nadolny, in the General Commission on May 27, during the discussion of the British Draft Convention:

If the Conference were really disposed to decide upon the complete abolition of military aviation, the German delegation felt that that measure must in no case be allowed to break down on the question of civil aviation. Germany, for her part, was prepared to go as far as possible to prevent

the use of civil aircraft for military purposes, and she did not wish to be the least modest on that point.²⁷

The French delegate, M. Pierre Cot, on March 7:

The difficulty really lay in taking the political decision. The French delegation, on behalf of its Government, had taken its decision. In spite of the air forces at her disposal, France would willingly give them up in the interests of peace, subject to the conditions which she had submitted; these conditions she considered necessary, as it was not her intention that by her sacrifice others should be enabled to provide themselves with air forces for less honourable purposes. The internationalisation of civil aviation must be supplemented by an international air police force, which should remain strictly a police force but should be sufficiently efficient and energetic to be able to safeguard peace and to prevent aggression.

It should not be supposed that the two main provisions of the French air plan were on the point of being adopted by the Air Committee, although the French plan, as has been noticed, had met with a good deal of support from certain delegations. The draft resolution adopted by the Air Committee on March 1 is perhaps sufficiently indicative that "the discussion was proceeding in a vicious circle" (these words were used by Mr. Eden of the United Kingdom delegation on March 15).

The Special Committee finds:

- (1) that its present work is based entirely on the hypothesis of the total abolition of military and naval aviation and bombing from the air, which it is its object to make possible;
- (2) that the only two preliminary questions still to be discussed with a view to a decision as to the abolition of military and naval aviation are:

²⁷ *Records of the Conference for the Reduction and Limitation of Armaments*, Series B, *Minutes of the General Commission*, Vol. II, p. 542.

- (a) internationalisation
 - (b) air police force;
- (3) that all the views expressed in the discussion on these two questions are directly conditional upon the acceptance of the abolition of military and naval aviation, and that, if no agreement is reached as to the scope of that measure, the opinions expressed and the decisions reached on the subject of civil aviation will be null and void;
- (4) that it is the Committee's intention to report to the General Commission as early as possible and, in any case, before March 11.²⁸

A draft questionnaire was submitted to the Air Committee on March 13 "concerning the measures to be taken in order to render possible the abolition of military and naval aviation." The first part concerns the internationalization of civil aviation; the second part, the establishment of an international air police force.²⁹

The Draft Convention submitted by the United Kingdom delegation on March 16, recognized that the complete abolition of military aircraft "must be dependent on the effective supervision of civil aviation to prevent its misuse for military purposes." Its air provisions were far less sweeping than those of the French and certain other delegations. Annex II of Chapter III ("Air Armaments") is concerned with measures for both civil and military aviation.

1934 (June 8). The General Commission "instructed its Air Committee to resume forthwith the study of the questions mentioned in its resolution of July 23, 1932, under the heading 'I. Air Forces.' " ³⁰

1934 (November 20). Rt. Hon. Arthur Henderson,

²⁸ Doc. Conf. D/C.G./C.A./6-1.

²⁹ Doc. Conf. D/C.G./C.A./8.

³⁰ Doc. Conf. D/C.G.168; Conf. D/Bureau 64-1.

President of the Disarmament Conference, reminded the Bureau that "it should not be forgotten that the air question mentioned in the June resolution has not yet even been considered by the appropriate committee, and should, therefore, be taken at the earliest possible opportunity when the negotiations concerning it have sufficiently prepared the ground." M. de Madariaga said that: "In his capacity as Chairman of the Air Committee, he desired to point out that it had been impossible for him to convene the Committee with any conviction that it could do really useful work. If the delegations represented in the Bureau could enable him usefully to convene the Air Committee, he would do so without delay."⁸¹

⁸¹ Doc. Conf. D/Bureau/P.V.62.

"Mr. Henderson is to be congratulated on the speech with which he opened the proceedings of the General Commission; particularly on his reference to 'the danger of a competition in air armaments unless this subject is speedily regulated by international agreement.' . . . The Air Committee is instructed to study the questions mentioned in its resolution of July 23rd, 1932, which went no further than a demand for prohibition of bombardment from the air and the 'regulation' of civil machines. It did not, that is, call for the abolition of national military air forces. Yet this is the indispensable basis of any plan for 'civilising' or demilitarising aviation. When one looks back on the discussions of the Air Committee in 1933 one sees that the delegates were being driven, however reluctantly, to this conclusion, and, indeed, to acceptance of the point of view stated so clearly and incisively by M. Pierre Cot, namely, that civil aviation must be regulated by an international system of controls at the very least, and a European air police force, with certain military attributes, instituted as a guarantee against misuse of the civil machine.

"We are convinced that air disarmament in Europe on these lines is a policy that can and should be pressed on the Governments here and now. The new and revolutionary idea of international government has to be applied first of all to the new and revolutionary science of aviation; then we shall gradually come to see that national armies and navies beyond the level required for domestic policing are an expensive anachronism." *New Commonwealth*, London, July, 1934.

"The threatened split in the [British] League of Nations Union

In the Disarmament Conference no tangible progress has yet been made toward even a partial or temporary solution of the grave problem of the air. It is patent, of course, that the various parts of disarmament are interconnected and that it is impossible to deal with one without immediately realizing the effect on all the others. The reestablishment of the German air force altered to a considerable degree the balance in the relationship between civil and military aviation as calculated in the first phase of the Disarmament Conference. In fact, the revival of German military aviation coincided with the period when any serious preoccupation with disarmament, as such, had practically disappeared, giv-

over the question of an international air police force was averted, or at least postponed, when the General Council resumed its meeting." *Manchester Guardian*, December 15, 1934.

" . . . Mr. Baker also claimed that a campaign by air armament interests in Great Britain was a principal factor in defeating proposals for air disarmament at the Geneva Conference. He said this question of air disarmament and the abolition of air warfare had entered the realm of practical politics after the speech of Mr. Baldwin in the House of Commons on November 10, 1932. The Committee debates showed that the policy of total air disarmament was warmly supported by France, Germany, Russia, Italy (subject to certain reservations), Spain, Sweden, Belgium, Holland, and other Powers, and it was ultimately accepted by the United States Government after President Roosevelt came into office. Mr. Baker said he had heard the opinion expressed by many impartial observers that if the British air experts had been fighting for a disarmament solution as hard as they were fighting against it, the success of the conference in this matter would have been certain." *The Times*, London, October 31, 1935. Mr. P. J. Noel Baker was Parliamentary Private Secretary to the British Secretary of State for Foreign Affairs, 1929-31, and Private Secretary to the President of the Disarmament Conference, 1932-33.

These extracts have been reproduced not because they are necessarily representative of public opinion, but rather because they are indicative of a conviction of the vital necessity of international organization in the air, a conviction which has developed slowly and is now becoming less inarticulate. In *The Menace to our National Defence*, by Sir Norman Angell, London, 1934; and *Britain's Political Future*, by Rt. Hon. Lord Allen of Hurtwood, London, 1934, this conviction is frankly and clearly expressed.

ing place to new efforts, both in the League and within its orbit, to organize peace and security.

RELATIONS BETWEEN CIVIL AND MILITARY AVIATION

In view of the statements made by certain authorities regarding the relationship between civil and military aviation, which have been reproduced in the preceding pages, it is hardly necessary to give actual examples of "convertibility." Such examples are numerous and are not difficult to discover elsewhere.³²

³² See *L'Illustration*, Paris, November 19, 1932, special number on the 13th [International] Salon de l'Aéronautique; also *L'Aéronautique*, Paris, January, 1933, and December, 1935, special numbers on Salon and French aviation respectively. Brig.-Gen. P. R. C. Groves, former Director of Flying Operations at the British Air Ministry, writes with authority in "The Relations between Civil and Military Aviation," *Enquiries into the Economic, Administrative and Legal Situation of International Air Navigation* (Doc. C.339.M.139.1930.VIII), and in *Behind the Smoke Screen*, London, 1934. In the third of a series of four articles, entitled "Our Future in the Air," published in the [London] *Observer*, January, 1935, General Groves writes, in part:

"The following facts are incontrovertible:—That the ground organisation which provides a nation-wide system of aerodromes and air parks, with their accompanying equipment for supply and repair, would be invaluable in war; that the civil air mechanics are fully qualified for military service, that the pilots who fly air liners are, *ipso facto*, by reason of their exceptional experience in blind flying and in air navigation, first-class bombing pilots. . . . The demand for greater weight-carrying capacity, higher speed, and increased range, combined with a reduction in the weight/power ratio, has led to the production of commercial transport machines possessing a very high potential of military efficiency. Among the best examples of such are the Lockheed Electra, the Boeing and the Douglas American liners, which are now being manufactured in Europe. Another class particularly suitable for military purposes are the high-speed mail carriers, such as the German Heinkel 70.

"Apart from these considerations, there is no doubt that in Europe suitability for military use has frequently taken precedence of economic requirements in the design and construction of civil machines. The result is that some of the latter now employed actually possess a better military performance than that of the obsolescent military types with which European air forces, including our own, are partly equipped.

"Similarly, a nation's entire civil air transport equipment lends it-

A setting out of strictly comparable figures of state expenditure on civil and military aviation in the various European countries is virtually out of the question because of the different systems of appropriations and also because of the difficulty, if not the impossibility, at times, of obtaining certain figures. In some countries, for instance, there are general services which, having both civil and military functions, cannot be split up between the two; for example, in Greece "the Technical Service is common to military and civil aviation, as are the Accountancy, Wireless, and Meteorological Services."³³ After making as careful calculations as were possible with the available official and unofficial documents, the following percentages on the distribution of expenditures for air services were reached by the writer over the period 1929-1933; civil, 11 per cent; military, 89 per cent. Mr. Edward P. Warner, Editor of *Aviation*, arrived at practically the same proportions: civil, 11.4 per cent; military, 88.6 per cent.³⁴ Brig.-Gen. P. R. C. Groves states that "European States, with few exceptions, devote less than 5 per cent of their annual air votes to the development of commercial aviation."³⁵ Considering the varying degree of "convertibility," it might even be

self to military exploitation. By this means, the ground organisation essential to air-power can be readily expanded and improved, additional pilots and mechanics can be trained, and reserves of every type of aircraft required in war can be created."

³³ *Replies to League of Nations Questionnaires concerning the Organisation of National Civilian Forces*, Doc. Conf. D/C.A.8/1932, p. 39.

³⁴ *Aviation* (statistical number), New York, 1932.

The percentages attributed to Mr. Warner are derived from expenditures of European countries (U.S.S.R. excluded), also certain Belgian, British, and Dutch colonial expenditures. These latter, however, affect the final percentages only very slightly.

³⁵ Groves, "The Relations between Civil and Military Aviation," *op. cit.*, p. 91.

argued that virtually all air expenditure is for military or potentially military purposes.⁸⁶

The civil aviation departments of France, Germany, Great Britain, Greece, and Italy are part of, and subordinate to, their respective air ministries; that of Yugoslavia is administered by the Ministry of the Army and the Navy. The French and German air ministers in 1936 both held the rank of general. Before the Italian Prime Minister took charge of the Air Ministry late in 1933, an Air Marshal was Minister; the Italian Under Secretary for Air and the Director of Civil Aviation are both generals. The three British Directors of Civil Aviation have all held military rank.⁸⁷ The Director-General of Belgian Aeronautics is a colonel; the same rank is held by the Yugoslav Director of Civil Aviation.

The purpose of the succeeding chapters will be to set forth the elements of international organization actually found in European air transport, because such elements exist, especially in the legal and technical fields; it is less easy to discern them in the establishment and operation of the existing national air transport companies.

⁸⁶ "Air transportation became a recognized arm of an air force when during the year [1933] all the nations installed on their lines planes and auxiliary equipment which in speed and other performance qualities equalled, and in some instances exceeded, the military equipment of two years ago" (p. 183).

With respect to the U.S.S.R.: "Civil aviation is regarded as a military reserve. All organizations are closely linked with the military air forces, and their activities are in support of air force development" (p. 233). "Practically all aeronautics in Roumania is military in character, and control of civil activities has reverted to the military authorities" (p. 227). *Aircraft Year Book for 1934*, Aeronautical Chamber of Commerce of America, Inc., New York, 1934.

⁸⁷ In December, 1934, it was announced that the British civil aviation vote would no longer be considered jointly with military expenditure and that the Director of Civil Aviation would henceforth be Director-General but would not become a member of the Air Council. *The Times*, London, December 21, 1934.

II

COMPETITION AND COÖPERATION IN INTERNATIONAL AIR SERVICES

It will have been gathered from Chapter I that the setting in which air transport was born in 1919 was overwhelmingly military. It was, therefore, natural that virtually all the early material and personnel should be inherited from the military air forces.¹ From the outset it was clear that, although flight is "international," the various air transport undertakings were to be conducted, so far as possible, according to national conceptions and methods.² It is necessary to bear constantly in mind the peculiar and unprecedented circumstances which have

¹ As late as 1926, of the 266 aircraft constituting the French air transport fleet, more than 50 per cent were obsolete military aircraft, already replaced in the military forces by more modern machines. Louis Kahn, "L'Aviation Commerciale en France et à l'Étranger," *Revue Politique et Parlementaire*, Paris, 1927, p. 259.

² "The company [Imperial Airways] is the chosen instrument of the Government for the development of Empire routes." G. E. Woods Humphery, Managing Director, Imperial Airways Ltd., *A Review of Air Transport*, London, 1933.

"Was it not realised that, in Europe as now partitioned, the fact that the great air lines were national, and strictly national, had hitherto paralysed the development of civil aviation and even technical progress in respect of aviation?" M. Pierre Cot, French Air Minister, in the Air Committee, Disarmament Conference, February 20, 1933.

"Reverting to his theme, he desired to enumerate the essential conditions for the development of civil aviation and the maintenance of peace: in the first place, the unification of international and national law; in the second place, the perfecting of the ground organisation and the adoption, by means of an international Convention, of uniform ground installations; in the third place, the creation of international companies for the operation of certain lines; lastly, the creation of a general international company to operate the main-line system and exercise control over other companies." M. Louis de Brouckère, Belgian delegate, in the Air Committee, February 27, 1933.

surrounded this new form of transport from the beginning, thus rendering it very different in most respects from other forms of transport. In spite of this, it will be noticed in later chapters that in the legal and technical fields there is a considerable and ever-growing amount of international organization. Can one discern even the beginnings of such organization in the establishment and operation of the actual European air transport companies?

In recent years, two main theses have been defended: one by those who wish, generally speaking, to maintain the *status quo*, that is, air transport undertakings operated by national companies, coöperating here, competing there; and the other by those who wish to reorganize European air transport under an international régime.³

INTERNATIONAL SERVICES BY NATIONAL COMPANIES

The first years of air transport, say from 1919 to 1925, were largely experimental and tentative, there being as yet little definiteness, clarity, or continuity in the policies of the European states. Some of the early ventures were completely unjustified from every point of view, and were doomed to failure from the outset. Others still continue to operate on their original bases, or have been absorbed in certain combines or monopolies. Even today, the activities of most companies are of relatively little significance in the European network as a whole.⁴

³ These theses have found notable and frank expression in the debates of the Air Transport Co-operation Committee of the League of Nations and in certain documents issued by the League Secretariat, chiefly emanating from its Communications and Transit Organisation. See *infra*, Chapter VIII.

⁴ The German system (including the German-Soviet *Deruluft*) in 1932 produced and utilized as many ton-kilometres as the companies of the following countries taken together: Austria, Belgium, Czechoslovakia, Denmark, Finland, Greece, Hungary, the Netherlands, Poland, Roumania, Spain, Sweden, Switzerland, and Yugoslavia.

The very earliest undertakings, most of which were launched by subsidized aircraft or engine manufacturers, have a certain historical interest. The first national company, Luftreederei, inaugurated the first regular air transport service in Europe, that between Berlin and Weimar, on February 5, 1919. While continuing the German policy of densening the network of internal lines, international services between Berlin-Hamburg-Copenhagen-Malmö and Berlin-Hamburg-Amsterdam were opened in 1920. On February 8, 1919, the (French) Farman company effected, with a former bomber, the first international air service in the world, that between Paris and London. Aircraft Transport and Travel (Holt Thomas) inaugurated the first British service between London and Paris on August 26, 1919. This same month, the International Air Traffic Association (I.A.T.A.) was established.⁵ In September, 1919, Handley Page began to operate between London and Brussels. No British company was subsidized by the state up to March, 1921. In the latter part of 1919, Messageries Aériennes and Transaérienne effected services between Paris and London. The nucleus of Aéropostale in the regular air-mail service of the Latécoère company between Toulouse-Barcelona-Casablanca, took shape in July, 1919. By this time, French civil aviation was already subsidized by the state and the lines of France's peace time air policy were becoming visible. Drastic reductions in French rates on Channel flights in February, 1921, led the British government to institute a temporary subsidy scheme whereby the Instone and Handley Page interests, each effecting a London-Paris service, were to operate on alternate days and share the subsidy. By 1922, three Brit-

⁵ See *infra*, Chapter VII.

ish companies were competing with one another on this route, all sharing an increased subsidy.

This early period, however, witnessed the beginnings of three important enterprises which showed relative stability from the outset. Royal Dutch Air Lines (K.L.M.) established its first service between Amsterdam and London in May, 1920. The Franco-Roumaine,⁶ conceived as a political and strategic link between France and certain associated states, inaugurated the Paris-Strasbourg-Prague line in October, 1920, which was extended to Warsaw in the following year and to Istanbul in 1923. Deruluft, a jointly constituted and jointly operated German-Soviet effort, subsidized by the two governments, was established in 1921 and linked together Berlin and Moscow in the following year. This is important as the only "international" air transport company which has existed up to the present time.

British policy was clearly defined in the establishment of Imperial Airways in March, 1924. Aero-Lloyd and the Junkers⁷ transport interests joined together late in 1925, becoming Deutsche Lufthansa, supported by the

⁶ The Franco-Roumaine became the *Compagnie Internationale de Navigation Aérienne* (C.I.D.N.A.) in 1925. The C.I.D.N.A. must not be confused with the C.I.N.A. (International Commission for Air Navigation). Despite its name, and the fact that it received some small financial support from Czechoslovak, Polish, Roumanian, and Yugoslav sources (apart from generous French funds), the C.I.D.N.A. was a French and not an international company.

⁷ Despite the restrictions on German aviation imposed by the Allies, German penetration into the field of air transport is clearly seen in the Junkers plan in 1925 for coordinating all its associated companies into an organization to be known as "Europa Union." Because of the German financial crisis, this union did not materialize, the amalgamation of Aero-Lloyd and the Junkers interests taking its place. "Europa Union" was to have comprised the then-existing "Nord-Europa Union," consisting of certain Danzig, Estonian, Finnish, German, Latvian, and Swedish companies, and "Trans-Europa Union," consisting of certain Austrian, German, Hungarian, and Swiss companies.

Reich. Air Union was formed in 1923 out of the two competing French lines on the Paris-London route. This enterprise, together with the Farman interests embodied in the Société Générale de Transport Aérien (S.G.T.A.), the C.I.D.N.A., Air Orient and Aéropostale, united to form Air France only in 1933. The new Italian company, Ala Littoria S. A. (A.L.S.A.) constituted in 1934, groups together the former Società Aerea Mediterranea (S.A.M.), the Società Anomina Navigazione Aerea (S.A.N.A.), and the Società Italiana Servizi Aerei (S.I.S.A.). Three other Italian companies effecting regular services still remain separate entities; however, the Federazione Nazionale Fascista Esercenti Imprese di Trasporto embraces all Italian air enterprises.⁸ The authoritative, centralizing hand of the state is felt in the

⁸ All Italian air transport and air touring enterprises are obliged to join the Federazione Nazionale Fascista Esercenti Imprese di Trasporto which was established in 1926 shortly after the institution of the Ministry of Corporations and the National Council of Corporations. In addition to the Ala Littoria, the Aereo Espresso Italiano, the Avio Linee Italiane and the Nord Africa Aviazione (all of which carry out regular air services), the Federazione also includes the Società Anonima Cantieri d'Aeroporto (S.A.C.A.), the Società Incremento Turismo Aereo (S.I.T.A.R.) and the Compagnia Italiana Viaggi Aerei (C.I.V.A.), these latter companies having various functions, including airport operations and air taxi services. The Federazione, although juridically autonomous, is a unit in the Confederazione Fascista degli Industriali, grouping together forty-eight employers' federations.

The interests of the personnel of the Italian air transport enterprises are grouped together in the Federazione Nazionale Fascista della Gente dell'Aria, which is part of the Confederazione Fascista dei Lavoratori dell'Industria, comprising thirty-one workers' federations. Further, the whole of the Italian national economy consists of twenty-two corporations (political organs, employers and employees). The Italian air enterprises fall under the Maritime and Air Corporation, established June 23, 1934, and in which two air transport employers and two employees are represented. Extracted from memorandum furnished by Dr. M. Molfese, Inspector-General, General Directorate of Civil Personnel and General Affairs, Italian Air Ministry, September, 1934.

sustaining and directing of virtually all other European air transport companies.

SUBSIDIES AND COMMERCIAL RECEIPTS

While the ultimate goal is doubtless financial autonomy, European air transport enterprises came into existence and have continued to exist because of state guarantees and support.⁹ This is true even where the greater part of the original share capital was derived from private sources. Most of these enterprises are "private" companies, but several are actually state organizations which operate without any share capital, their requirements being met by annual budget appropriations.¹⁰ It is perhaps needless to add that, without the renewal of public credits each year (usually in the form of subsidies), the original share capital of the various companies would soon vanish. It is understood that state aid is usually advanced to the air transport companies on the distinct understanding that the personnel and material would be immediately turned over to the government in the event of hostilities. The most common form of assistance is the

⁹ In October, 1935, it was reported that several British internal air lines were to combine with Hillman's Airways (which was the only company operating unsubsidized international air services in Europe, viz.: London to Paris, Brussels and Antwerp) to form "Allied British Airways." It was also announced that the British Continental Air Line was to operate services from London to Lille, Brussels, Amsterdam, and later to northern Europe, all unsubsidized.

¹⁰ E.g., Československá Státní Aerolinie is operated by a provision in the budget of the Czechoslovak Ministry of Public Works. The other Czech enterprise, Československá Letecká Společnost, is a "private" company subsidized by the state. The Roumanian line, Lares, is considered to be a state enterprise, being directly supported by the Department of Civil Aviation. This department also subsidized Air France in 1933 to the extent of 4,000,000 lei (\$39,545, January 1, 1935, based on the "external" value of the lei), the French company being also exempted from certain Roumanian taxes. It appears that the Roumanian government does not subsidize any other foreign air company, although certain tax exemptions are granted.

subsidy, the amount of which is usually based on the kilometrage or mileage¹¹ flown on an approved schedule, in some cases without any reference to the quantity of traffic handled. It follows, therefore, that if the subsidy is reduced, the distance in kilometres flown will be accordingly reduced. The tariffs established by the companies are determined to a notable extent by the amount of subsidy received.

The proportion of the subsidy to the total receipts (subsidy plus commercial receipts) of course varies widely. It is relatively small and steadily decreasing in the case of the European services of Imperial Airways,¹² and of the Danish, Dutch,¹³ Finnish, and Swedish companies. The proportion of subsidy to total receipts is larger in the case of France¹⁴ than of Germany, and larger again as regards Italy and Poland than as regards

¹¹ Early in the operation of Imperial Airways, a "horse power/miles" formula was substituted for "aircraft/miles" in the contracts covering the payment of the government subsidy.

¹² "In 1932, the subsidy had fallen to under 45 per cent of the total revenue for the European services [of Imperial Airways]. For the current year, it amounts to about 35 per cent." G. E. Woods Humphery, Managing Director of Imperial Airways, Ltd., "British Air Mails," *Revue Aéronautique Internationale*, Paris, March, 1934.

¹³ In 1933, the commercial receipts of the Dutch company (K.L.M.) amounted to 76 per cent of the total receipts; it was reported that the commercial receipts of this company in 1934 rose to 82 per cent of the total receipts. Henri Bouché, *Economics of Air Transport in Europe*, Organisation for Communications and Transit, League of Nations, 1935, pp. 69, 72.

¹⁴ According to Henri Bouché ("Pourquoi il faut réorganiser l'aéronautique marchande française," *L'Illustration*, Paris, May 20, 1933), who bases his calculations on official documents for the year 1931-1932 placed at his disposal by the French Air Ministry, of total receipts of the European lines of the French air transport companies, 80 per cent were derived from state subsidies and only 20 per cent from commercial receipts. The proportions given for C.I.D.N.A. (to central and eastern Europe) were: subsidy, 84 per cent, commercial receipts, 16 per cent; for Air Orient (Marseilles-Saigon): subsidy, 91 per cent, commercial, 9 per cent. The latter service had not long been in operation.

France. In fact, the commercial receipts of several European air transport undertakings are simply negligible. After some fifteen years, the air transport activities of Europe as a whole appear to have gone between one-quarter and one-third of the distance towards financial autonomy. Over the period 1930-1932, the percentages in receipts from the three categories of air transport in the European area stood, approximately, as follows: passengers, 55 per cent; freight, 23 per cent; and mail, 22 per cent. The postal receipts are of special importance in the case of the Scandinavian lines, chiefly because of the night air-mail services between Scandinavia (including Finland) and central and northwestern Europe.

In several countries, the subsidy includes lump-sum payments for air mail carried, special credits for the acquisition of material, etc. In other countries, loan funds with a low rate of interest have been constituted. Apart from the subsidy, as such, the cost of installing and maintaining the ground organization ("infrastructure," consisting of aerodromes, landing fields, operating signals, beacons, wireless telephony and telegraphy, direction-finding, etc.) is usually met by the state, which places this equipment at the disposal of the companies. Sometimes the same installations are available to both civil and military aviation. Such ground organization is not always constructed solely with commercial and technical aims in view.

While the economic position of air transport, as such, does not come within the bounds of this volume,¹⁵ it has been considered important to include in the present chapter, preliminary to the discussion of existing interna-

¹⁵ In the section devoted to the International Air Traffic Association in Chapter VII, mention will be made of the coöperating arrangements between the companies which are members of the I.A.T.A.

tional organization, some indications regarding (1) the joint German-Soviet air transport company, usually known by its abbreviated title, Deruluft, whose establishment has been mentioned,¹⁶ and (2) the purely optional pooling arrangements between various air transport companies. Herein are, perhaps, to be found the beginnings of the future international organization of the actual air services. There is little available published information on the pools and on Deruluft, the persons responsible for the administration of the former, especially, having from the outset shown a disinclination to furnish any details.

DERULUFT: "INTERNATIONAL" COMPANY

The Berlin-Danzig-Koenigsberg-Kaunas (Lithuania)-Welikije Luki (U.S.S.R.)-Moscow line and the Berlin-Danzig-Koenigsberg-Riga (Latvia)-Tallinn (Estonia)-Leningrad line are run by Deruluft, under a concession contract, originating in 1921 and last revised in 1932, concluded between the government of the Union of Soviet Socialist Republics and Deutsche Lufthansa. The paid-up capital was contributed in equal shares by each of the two parties. Subsidies are paid to Deruluft by the general directorate of Soviet civil aviation, known as Aeroflot, and by Lufthansa. The board of directors consists of an equal number of Soviet and German members. This also applies to the personnel and the material, one-half of which is German and the other half Soviet. There are two managers, a German stationed at Berlin and a Russian at Moscow. Berlin is officially named as the general headquarters of the company. At Moscow, Deruluft makes connections with air services in other parts of U.S.S.R., and also with Afghanistan, China, and Iran.

¹⁶ *Supra*, p. 29.

It has been a member of the International Air Traffic Association since 1926.¹⁷

POOLS

Not even a list of the existing pools has been published by governments, by the International Air Traffic Association, or by the individual companies which are parties to the pools. The following questionnaire was sent to the I.A.T.A. early in 1933 by the Communications and Transit Organization of the League of Nations, at the request of the Rapporteur to the special subcommittee to study the question of the constitution and operation of a main network of permanent air routes in Europe and the Mediterranean basin:

1. Definition of the various kinds of arrangements between contractual air transport companies (pools or more limited agreements for joint operation or simply for representation).
2. List of pools and agreements registered by or known to the I.A.T.A., with a list of companies parties thereto and of the air services to which they relate.
3. If possible, examples (naturally of a general nature) of the terms of the agreements.

The I.A.T.A. replied that particulars concerning this matter should be given by the respective governments.¹⁸

¹⁷ *M. Chaumié*: "The Reich . . . had taken advantage of the enviable facilities it enjoyed to found, with the U.S.S.R., a real international Russo-German company, 'Deruluft.'"

M. Fisch: "The example of the Russo-German Company showed quite clearly that in the present state of affairs it was quite possible for an international company to exist. There was, therefore, no necessity, in order to create such a company, to adopt a resolution such as proposed by M. Sondermayer." Record of the second session, Air Transport Co-operation Committee, League of Nations, 1932, pp. 39-40. It was reported in 1934 that the establishment of a Polish-Soviet company, similarly constituted, was under consideration. It appears that the Soviet currency and legal systems, as existing in 1936, do not render easy the formation of an "international" company.

¹⁸ "Companies, it might be objected, were beginning to come to an agreement and to form what were known as 'pools.' The Belgian

This is a virtual admission that, while the formal arrangements are made by the companies themselves, the influence of the subsidizing governments is never absent.

Despite the impossibility of obtaining even an official list of the pools, a careful attempt has been made to establish a list which, it is believed, is, in the main, complete up to the beginning of 1936.¹⁹ For the sake of convenience, the nationality of the company is given instead of the name of the company. The order is purely arbitrary.

Lines Operated in Pool by Companies Which Are Members of the International Air Traffic Association (I.A.T.A.)

Berlin-Cologne-Paris (German-French)

Berlin-Copenhagen-Malmö (German-Danish-Swedish)

Hamburg-Copenhagen-Malmö (German-Danish-Swedish)

Berlin-Munich-Venice-Rome (German-Italian)

Berlin-Halle/Leipzig-Frankfurt-Saarbrücken-Paris (German-French)

Berlin-Halle/Leipzig-Stuttgart-Zürich (German-Swiss)

Berlin-Poznań-Warsaw (German-Polish)

Berlin-Vienna (German-Austrian)

Amsterdam - Cologne - Frankfurt - Mannheim/Ludwigshafen/Heidelberg-Basel-Zürich (German-Swiss)

Berlin-Dresden-Prague-Vienna (German-Czech-Austrian)

Vienna-Salzburg-Munich-Zürich (German-Austrian)

Halle/Leipzig-Chemnitz-Karlovy Vary-Mariánské Lázně (German-Czech)

delegate agreed that that already was no mean progress, but he hoped that more would be done. Often it was found that companies, when replying to the League's questionnaires, refused to say what those 'pools' consisted of." M. Louis de Brouckère, Belgian delegate, in the Air Committee, Disarmament Conference, February 27, 1933.

¹⁹ There are also "partial pools," which provide for only a limited amount of co-operation.

Cologne-Brussels-Paris (German-Belgian)
Vienna-Klagenfurt-Venice (Austrian-Italian)
Belgrade - Zagreb - Graz - Vienna (Yugoslav - Austrian-French)
Budapest-Vienna (Austrian-Hungarian)
Paris-Geneva (French-Swiss)
Paris-Brussels-Rotterdam-Amsterdam (French-Belgian-Dutch)
Brussels-Antwerp-Rotterdam-Amsterdam (French-Belgian)
Amsterdam - Hamburg - Copenhagen - Malmö (Dutch-Swedish)
Amsterdam-Copenhagen-Malmö (Dutch-Swedish)
Paris-Basel-Zürich (French-Swiss)
Stockholm-Turku-Helsinki-Tallinn (Swedish-Finnish)
Zagreb-Sušak (Czech-Yugoslav, although both these points are in Yugoslavia)
Amsterdam-Frankfurt-Milan (Dutch-German-Italian)
Amsterdam-Halle/Leipzig-Prague (Dutch-Czech)
London-Amsterdam-Berlin (Dutch-German)
Paris-Bordeaux-Madrid (French-Spanish)
Paris-Marseilles-Rome (French-Italian)

The intensive competition of national companies flying between the same points for what is often the little available traffic has naturally created difficult operating conditions. This is especially true of parts of central, and most of eastern, Europe where economic activity is relatively low. Several of the bilateral agreements, which will be discussed in Chapter V, were designed to establish co-operation between companies of the two countries concerned, which, under the terms of the agreement, were authorized to operate a common line. Frequently, a similar situation arises without the conclusion of a diplomatic

agreement: the state, over whose territory flights are to be made, granting to a foreign company the right to operate particular services, provided that the foreign company comes to an agreement with the national company. Some companies have, therefore, endeavored to meet the situation by entering into such arrangements to restrict competition or to diminish its effects.

The companies concerned do not publish details of pooling arrangements. The following general outline, however, may be taken as fairly typical. It is based on a specimen of a German pooling arrangement, Lufthansa having concluded more pools than any other company,²⁰ and is described as one "which is not a copy of any actual agreement but which indicates the spirit in which most of them are drawn up."²¹

The number of flights is regulated by common agreement and usually consists of alternative or equal numbers of flights by each company. The companies undertake to represent each other and to assist each other in all negotiations concerning the operation of the line. Each company places at the disposal of the other in its own country the administrative and technical organizations on the line to which the arrangement applies, attends to all advertising and commercial business, undertakes the transport of all passengers and goods to and from the airport, and is responsible for the loading, unloading, provisioning, garaging, and general upkeep in its own country of the aircraft used on the service. Maintenance charges and all expenditure for repairs, fuel, material, etc., are borne by the company to which the aircraft belongs. It is important to notice that receipts from sub-

²⁰ Lufthansa participates in sixteen of the twenty-nine pooling arrangements included in the above list.

²¹ *Objective Study on the Internationalisation of Civil Aviation*, Conf. D/C.A.9, League of Nations, 1932, pp. 41-45.

sidies of every kind remain entirely at the disposal of the companies.²² As far as commercial receipts are concerned, postal receipts are usually retained by each particular company. However, in the establishment of the postal tariff, the quantity of mail carried by each company in the pool is taken into consideration.²³ Receipts from passenger and freight services are pooled and divided between the companies in proportion to the useful load and number of kilometres flown. This generally leads to a provision that aircraft of similar characteristics shall be used. No provision need be made abroad for auxiliary machines or pilots, each company assisting the other in case of 'breakdown'. A pooling arrangement tends to reduce general and operating expenses and to increase commercial receipts.

The specimen of a German pooling agreement just outlined does not contain any reference to the equality of tariffs within the pool. Such equality must, of course, be one of the essentials of any pooling arrangement.

It appears to be possible for pools to give rise sometimes to the establishment of services running contrary to state interests. Curiously enough, there is at least one pool which has led to competition between two national companies, each subsidized by the same state. Prior to becoming incorporated in Air France in 1933, the

²² "Remedies had been sought; by means of pools, the receipts from the passenger and goods traffic had been paid into a common fund, but until subsidies, too, were pooled this remedy would be inadequate. Further cooperation must be achieved by pooling, not only the quite inadequate receipts from passenger and goods traffic, but also the sole important contributions—those received from the States." M. Louis de Brouckère, Belgian delegate, in the Air Commission, Disarmament Conference, June 17, 1932.

²³ It appears that the first pool to have been extended to include postal receipts was that between Air France and Lufthansa for the Europe-South America service, negotiated in 1933, but not concluded.

Compagnie Internationale de Navigation Aérienne (C.I.D.N.A.) had been subsidized by the French government for some ten years to carry out certain services to central and eastern European countries, via Prague. Lufthansa, the sole German company, entered into a pooling arrangement with another French company, Farman Lines, which was also subsidized by France to carry out other services. It then became evident that the quicker and cheaper connection to central and eastern Europe was no longer via C.I.D.N.A. and Prague (French subsidy) but via the Farman-Lufthansa pool to Saarbrücken (this pool enjoying the benefit of both a French and a German subsidy), thence, by transfer arrangement, eastwards to Munich and beyond by the German subsidized company. This unsatisfactory situation has been attributed not to the pool system, as such, but to the "sterile and costly competition between C.I.D.N.A. and Lufthansa in central and eastern Europe."²⁴

It has been claimed that pools of long duration might have the effect of making it difficult for the state, as distinguished from the company, to recast its network of air lines as long as the particular pool lasts. A pool might thus tend to prolong the life of inefficient or uneconomic services in face of urgent need for reform.

Although the pooling arrangements may not have been found to be entirely satisfactory, one generally finds a

²⁴ Paul Perrin, Vice President of the [French] Air Commission, *L'Aéronautique marchande et les rapports de l'état avec les compagnies de navigation aérienne*, Paris, 1932, p. 42. The author suggests that the failure of C.I.D.N.A. and Lufthansa to conclude an agreement after the recommendations of the Franco-German Committee on civil aviation (1931-1932) issued from the fact that the head of C.I.D.N.A., a leading French aircraft engine manufacturer, counted among his best customers Czechoslovakia, Roumania, etc., countries served by C.I.D.N.A.

still less satisfactory situation where international services are run without some understanding between the companies. For over twelve years, the British and French lines, Imperial Airways and Air France (formerly Air Union), chiefly responsible for the Paris-London service, far and away the most important air line in Europe,²⁵ have competed strenuously in the matter of rates, as well as in speed and comfort of aircraft. When Great Britain abandoned the gold standard in 1931, it is claimed, Air Union was obliged to lower its Paris-London tariff to the "uneconomic" figure of seventy French centimes per passenger-kilometre for a return ticket.²⁶ During the course of the year 1934, there were discussions between the British and the French Air Ministries on various air transport matters of common interest, including the possibility of a tariff agreement, and even a pooling arrangement, between London and Paris.²⁷

The pools are far less numerous than may be imagined. More frequently national companies operate side by side, and even overlap, but all too seldom coöperate.²⁸

All the services mentioned, whether in pool, or in direct competition, are operated by members of the International Air Traffic Association.

²⁵ Taken by itself, Paris-London air traffic in 1932 (now operated by three competing companies: one subsidized British, one subsidized French and one unsubsidized British) showed more ton-kilometres utilized than the whole of the systems operated by the Austrian, Belgian, Czechoslovak, Danish, Finnish, Hungarian, Polish, Swedish, Swiss, Roumanian, and Yugoslav companies added together.

²⁶ Perrin, *op. cit.*, p. 44.

²⁷ See discussion of the question of the creation and operation of international airways and lines, *infra*, Chapter III.

²⁸ An account of the often strenuous competition between the imperial and intercontinental air lines from Europe to Africa, Asia, and South America does not, of course, fall within the province of this study.

III

THE INTERNATIONAL AIR CONVENTION OF 1919: BASIS OF PUBLIC AIR LAW

THE Aeronautical Commission of the Peace Conference of Paris was charged, among other duties, with the task of drawing up a Convention relating to air navigation.¹ The ex-enemy states and even the ex-neutral states had no part in the elaboration of the Convention. In fact, although the Aeronautical Commission included jurists and civilian experts, it was dominated largely by war-time pilots. The Convention relating to the Regulation of Aerial Navigation was signed at Paris on October 13, 1919. The principle governing the Convention is found in Article 1:

The High Contracting Parties recognise that every Power has complete and exclusive sovereignty over the air space above its territory.

For the purpose of the present Convention, the territory of a State shall be understood as including the national territory, both that of the mother country and of the colonies, and of the territorial waters adjacent thereto.

The principle of state sovereignty and other provisions of the Convention rendered it far less liberal than the Convention envisaged in 1910;² nevertheless, a definite advance had been made in the establishment of a basis of international public air law, which was not to be

¹ The Aeronautical Commission was partly inspired by an earlier body, the Inter-Allied Aviation Committee, established in 1917. Each of the following states had two representatives on the Aeronautical Commission: British Empire, France, Italy, Japan, and the United States of America; the following had one each: Belgium, Brazil, Cuba, Greece, Portugal, Roumania, and Yugoslavia.

² See *supra*, Chapter I.

confined to Europe but from the outset was to reach out to other continents, with universality as its ultimate goal.⁸

Of real significance from the point of view of international organization was the body to be charged with the administration and revision of the Convention. Chapter IV will be devoted to an examination of the scope and principal activities of the International Commission for Air Navigation.

The Convention was signed, within the fixed period, by the following twenty-six countries:

| | |
|----------------|--------------------------|
| Belgium | Panama |
| Bolivia | Poland |
| Brazil | Portugal |
| China | Roumania |
| Cuba | Siam |
| Czechoslovakia | United Kingdom (and Can- |
| Ecuador | ada, Australia, Union of |
| France | South Africa, New Zea- |
| Greece | land, and India) |
| Guatemala | United States of America |
| Italy | Uruguay |
| Japan | Yugoslavia |

Nicaragua and Peru later acceded to the signature.

The International Commission for Air Navigation

⁸ (Translation) "Instead of changing its nationality at frontiers, like railways, instead of manifesting its nationality of origin only at sea, which is free to all, or on territorial waters, as in the case of ships, an aircraft is, in the first instance, 'international' because it retains its nationality while flying across all the nations. Opposed to this entirely new assertion of nationalism in 1919 were the diplomatic agreements reserving or preserving the sovereignty of the State in the air space above national territories. Consequently, the Convention on air navigation, concluded in 1919, as an annex to the peace treaties, was a reflex of national defence rather than an instrument of international organisation." Henri Bouché, "L'Aviation civile internationale," *L'Illustration*, Paris, March 5, 1932.

(usually known by the initials of its French name, Commission Internationale de Navigation Aérienne, C.I.N.A.) was instituted at Paris on July 11, 1922, the day the Convention went into force for the following fourteen countries:

| | |
|----------|--------------------------|
| Belgium | Siam |
| Bolivia | United Kingdom (and Can- |
| France | ada, Australia, Union of |
| Greece | South Africa, New Zea- |
| Japan | land, and India) |
| Portugal | Yugoslavia |

The following countries have since become parties to the Convention:

Iran and the Irish Free State (1922)
 Bulgaria,⁴ Czechoslovakia, and Italy (1923)
 Poland, Roumania, and Uruguay (1924)
 Chile (1926)
 Denmark and Sweden (1927)
 Netherlands (1928)
 Panama (1929)
 Iraq and Norway (1931)
 Finland (1932)
 Switzerland (1934)
 Spain (1935)
 Argentine Republic (1935)

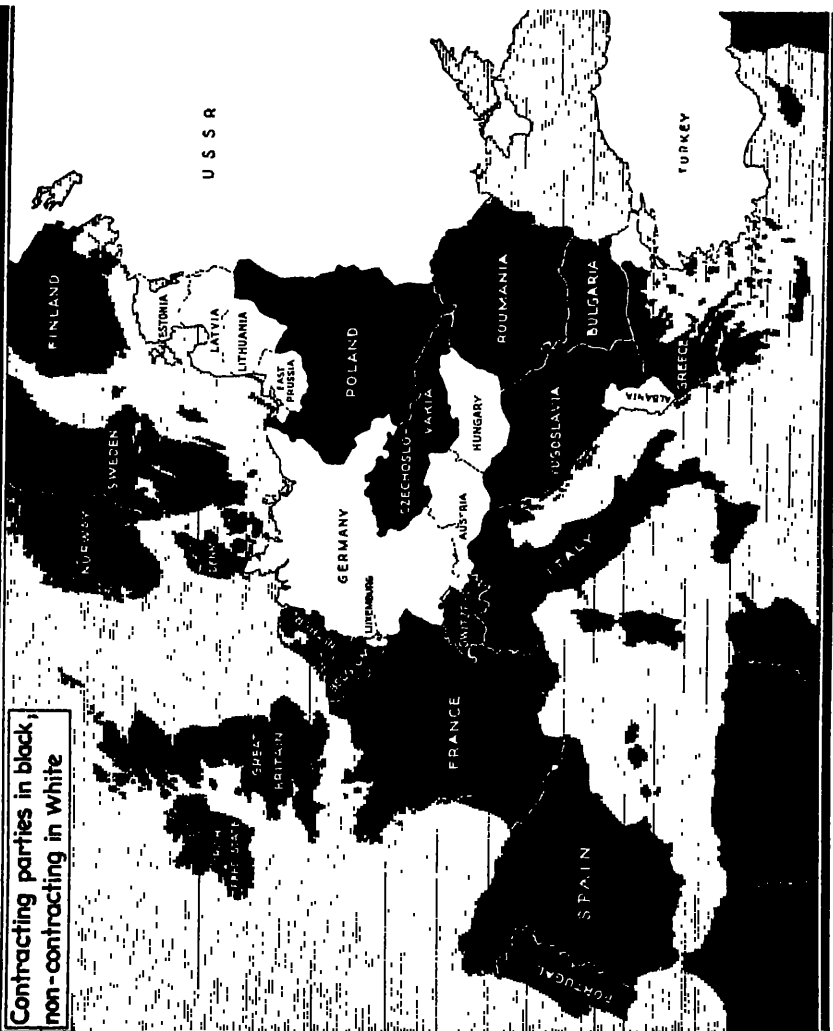
Bolivia (1924), Panama (1931), and Iran (1933) have denounced the Convention. The Saar Territory was party to the Convention from 1927 until its reincorporation into the Reich in 1935.

There are now, therefore, thirty countries which are

⁴ Bulgaria is the only ex-enemy state which has so far adhered to the Convention.

INTERNATIONAL AIR CONVENTION OF 1919

Contracting parties in black,
non-contracting parties in white



parties to the Convention: drawn from America (four); Africa (one); Asia (four); Europe (nineteen); and Oceania (two). These countries, with their respective colonies, protectorates, and mandates cover a very considerable area of the earth.

Of European countries, Albania, Austria, Estonia, the Free City of Danzig, Germany, Hungary, Iceland, Latvia, Lithuania, Luxemburg, Turkey, and the Union of Soviet Socialist Republics remain outside the Convention, all these countries being members of the League of Nations, except Danzig (placed under a special League régime), Germany, and Iceland. The United States of America has not yet ratified the Paris Convention.

At the twenty-second session of the C.I.N.A., held at Lisbon in 1934, the Secretary-General, M. Albert Roper, stated that

. . . With regard to Germany, to whom I have notified the entry into force of the Protocols of 1929, prepared in agreement with her representatives at the Conference of revision of 1929, the Under Secretary of State for Aeronautics has informed me that owing to her withdrawal from the League of Nations and the Disarmament Conference, the German Government deemed it advisable for the time being to abstain from giving its adhesion to the Convention.⁵

The admission of ex-enemy states (Art. 42) was originally conditioned upon either membership in the League of Nations or a three-fourths vote of the contracting Powers. Article 5 provided that "no contracting State shall, except by a special and temporary authorisation, permit the flight above its territory of an aircraft which does not possess the nationality of a contracting State." The signatory states, long before the entering into force

⁵ Exposé of Items on the Agenda, twenty-second session, C.I.N.A., Lisbon, 1934, p. 17.

of the Convention, began to make temporary agreements of this character with non-signatory states.⁶ The ex-neutral states, however, hesitated to subscribe to a convention which would have effectually severed their growing air communications with Germany and its late associates.⁷ In December, 1919, Denmark, Finland, the Netherlands, Norway, Spain, Sweden, and Switzerland declared jointly that they would adhere to the Convention only when Articles 5 and 34 respectively had been amended so as to (1) recognize to all contracting states the right to conclude special conventions with states not parties to the Convention; (2) grant equal voting rights to all the states represented on the International Commission for Air Navigation.

The Protocol of May 1, 1920, provided for derogations to be granted at the request of signatory or adhering states regarding the type of special agreements referred to above. On October 27, 1922, soon after the Convention went into effect, a protocol was signed (in force only from December 14, 1926) enabling any contracting state to conclude a special bilateral agreement with a non-contracting state provided that it did not conflict with the Convention. By an amendment to Article 34, signed on June 30, 1923, entering into force on December 14, 1926, each contracting state was entitled to one vote only on the C.I.N.A., Great Britain, India, and the Dominions figuring in this respect as one state. It was possible, previous to this amendment, for the four great Powers on the C.I.N.A., namely, the Brit-

⁶ E.g., Great Britain-Switzerland, November 6, 1919; France-Switzerland, December 9, 1919. See *infra*, Chapter V, for bilateral agreements.

⁷ The air clauses of the peace treaties, mentioned in Chapter I, will be recalled.

ish Empire, France, Italy, and Japan,⁸ always to secure a majority of one vote. All modifications of Articles of the Convention (but not of the Annexes, save Annex H) must be formally adopted by all the contracting states before they become effective. The entering into force of the above-mentioned protocols led to the conclusion of a number of bilateral agreements and to the adhesion to the Convention of the states mentioned. The great Powers still retained a somewhat privileged position regarding representation on the C.I.N.A. (as distinguished from voting) and amending the Annexes to the Convention, save Annex H (Customs), amendments to the latter annex having to be ratified by all the contracting states. These privileges were removed by the Protocol of June 15, 1929. By the Protocol of December 11, 1929, India and the Dominions are each entitled to one vote. Thus all contracting states are now on an equal footing. It will be noticed in Chapter IV that the states are naturally placed in different categories as regards contributions for the maintenance of the C.I.N.A.

The revision of the Convention was undertaken by an extraordinary session of the International Commission for Air Navigation held in June, 1929,⁹ to which were invited contracting and non-contracting Powers.¹⁰ This session led to the Protocols of June 15 and December 11,

⁸ The United States of America would have enjoyed a similar position in this respect if it had ratified the Convention.

⁹ The publication in 1928 of a critical memorandum by Alfred Wegerdt, of the German Ministry of Communications, with the authorization of his government, hastened the convening of the extraordinary session of the C.I.N.A.

¹⁰ The following non-contracting Powers attended the extraordinary session: Austria, Brazil, China, Colombia, Cuba, Estonia, Finland, Germany, Haiti, Hungary, Luxemburg, Norway, Panama, Spain, Switzerland, the United States of America, and Venezuela. Finland, Norway, Spain, and Switzerland have since adhered to the Convention, while Panama was a party to it between 1929 and 1931.

1929, effective on May 17, 1933, amendments being made to Articles 3, 5, 7, 15, 34, 37, 40, 41, and 42.

The Protocol of June 1, 1935, provides for amendments to Articles 4, 6, 7, 9, 12, 13, 14, 16, 19, 25, 26, 34, 35, and 39, as well as the addition of Article 25 *bis*.

The provisions of the International Air Convention have become part of the national legislation of the contracting states. In fact, the Convention preceded (with the exception of tentative and preliminary air laws and regulations enforced by certain European states prior to the advent of civil aviation in 1919 and since repealed) and inspired present national air law in Europe. The principles of the Convention have been taken into close consideration by nearly all non-contracting countries, European and extra-European, in the establishment of their national air laws.¹¹

¹¹ "The [Paris] Convention is anterior to any [postwar] national air law (in Europe, at least), and all these laws are based on the principles of the Convention." M. Albert Roper, Secretary-General of the C.I.N.A., December 14, 1934.

"The aim of this volume is to state the aeronautical law of England. . . . Nor would it be within my scope to deal with the public international law of aerial navigation if that aspect had not materially conditioned the rules of English law." Arnold D. McNair, *The Law of the Air*, London, 1932, p. 1. "As the Paris Convention of 1919 is the direct cause of the British Air Navigation Act, 1920, we must devote a very short space to the examination of some of the provisions of the Convention before we leave the international sphere and turn to the law of England." *Ibid.*, p. 5.

The [British] Air Navigation Act, 1920 (10 and 11 Geo.5,C.80) is entitled: "An Act to enable effect to be given to a Convention for regulating Air Navigation, and to make further provision for the control and regulation of aviation." The Air Navigation Acts, 1911-1919, were repealed by the Act of 1920 (Part II.20[2]). This Act enabled effect to be given to the Paris Convention. The Air Navigation Order, 1922, established under the Act on June 20, 1922, and operative simultaneously with the Convention on July 11, 1922, gave effect to the detailed requirements of the Convention. The general form and purpose of the 1922 Order were not substantially altered in the Air Navigation (Consolidation) Order, 1923. This Order has itself been amended from time to time, very largely in

The Ibero-American Convention, drafted at Madrid in 1926 at the time of Spain's threatened withdrawal from the League of Nations, reproduced the text of the Paris Convention save for modifications in nomenclature and in Articles 5, 7, 34, 36, 37, and 43. Annexes A, B, C, D, and E of the Convention of 1919 were included, while Annexes F, G, and H were omitted.¹² The Ibero-American Commission for Air Navigation, provided for in Article 34, was never established. Save for Portugal and Spain, the former being one of the original contracting parties to the Paris Convention, while the latter adhered to it in 1935, all the states represented at the Madrid Conference were Central or South American. The significance of this Convention today is academic and historic.

Even the Pan-American Convention, drawn up at Havana in 1928, while differing from it in some respects, reproduces a number of the essential provisions of the Paris Convention.¹³ No international body admin-

consequence of modifications in the technical Annexes to the Convention, and in order to administer the regulations laid down in the Convention. *Memorandum by the Secretary of State for Air on the Report of the Committee on Control of Private Flying*, London, July, 1934, p. 24.

¹² See Albert Roper, *La Convention Internationale du 13 octobre 1919*, Paris, 1930, pp. 316-325, for the text of the Ibero-American Convention. The following states were parties to the Ibero-American Convention: Argentina, Costa Rica, Dominican Republic, Mexico, Paraguay, Salvador, and Spain.

¹³ See *ibid.*, pp. 326-333, for the text of the Pan-American Convention. The following states are parties to the Pan-American Convention: Chile, Costa Rica, Cuba, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, and the United States of America. Chile is party to both the Paris and the Havana Conventions.

See Edward P. Warner, "The International Convention for Air Navigation and the Pan-American Convention for Air Navigation: A Comparative and Critical Analysis," *Air Law Review*, New York, July, 1932, pp. 222-308.

isters the Pan-American Convention. Also, there are no technical annexes to this Convention, such as form so significant a part of the Paris Convention.¹⁴ It is important to bear in mind that the essential purpose of the Pan-American Convention was to facilitate commercial air transport between North America, the West Indies, Central and South America, this transport, in fact, being chiefly effected by one American company, as contrasted with the numerous competing companies in Europe, subsidized by states which are parties to the Paris Convention. The Pan-American Convention takes up certain questions of private air law, such as the rights and duties of the commanding officer of an aircraft (Art. 25), and the question of damages to persons and/or property on subjacent territory (Art. 28). Such questions were left untouched in the Paris Convention, which deals exclusively with public air law.¹⁵

The Ibero-American Convention having no practical effect, and the Pan-American Convention being distinctly regional in its scope,¹⁶ the Convention of 1919, conceived as the original basis of international public air law, re-

¹⁴ The Seventh International Conference of American States, held at Montevideo in December, 1933, adopted a resolution to the effect that "within the shortest possible time . . . there be studied by a Commission of Experts . . . the means of still further accelerating inter-American aviation, by the establishment of a continuous line of radio stations, beacons and aerodromes, along the line of existing routes and others that may be considered desirable, and to determine what additional methods may be devised to bring about more rapid inter-American aerial communication facilities." An Air Transit Convention concluded at Buenos Aires on June 19, 1935, between the countries represented at the Pan-American Commercial Conference, and consisting of four Articles, would seem to be supplementary to the Havana Convention.

¹⁵ See *infra*, Chapter VI, for the unification of private air law.

¹⁶ For an open advocacy of United States ratification of the Paris Convention, see Warner, *op. cit.*, and William M. Gibson, "United States Commitments on International Aerial Navigation," *Air Law Review*, New York, October, 1933. Mr. Edward P. Warner was ap-

mains the only instrument of this type with any claims to, or prospects of, universality.

A large number of bilateral agreements have been concluded, either between states which have remained outside the multilateral conventions, or between a state party to one of these instruments and a state not a party thereto, for the purpose of regulating the questions dealt with in the multilateral conventions. These bilateral agreements are usually based upon the same principles as those found in the multilateral conventions. Also, bilateral agreements for the establishment and operation of air lines have been entered into even when the states in question are both parties to the Paris Convention. Reference to this latter type of bilateral agreement will be made in connection with Article 15.¹⁷

It can be held, therefore, that the Convention of 1919 has heavily influenced national, bilateral, and multilateral public air law. For the sake of simplification and clarity, the main provisions of the Paris Convention will be discussed here as the basis of public air law, emphasis being

pointed Vice Chairman of the Federal Aviation Commission in 1934 to make recommendations as to the future United States air policy. Among the recommendations of the Federal Aviation Commission is: "99. The commission hereinafter proposed should undertake a careful study of the subject of international public air navigation agreements to determine the desirable extent, if any, of American participation therein." *Journal of Air Law*, Chicago, April, 1935. Recommendation 102 proposes an Air Commerce Commission. On July 2, 1935, an Inter-Departmental Committee on Civil International Aviation was created at Washington "in order that constant, effective consideration may be given to the development of American air transport lines in foreign territories. The Committee is charged with the duty of making observations and gathering information pertaining to civil international aviation in all its phases and submitting such recommendations as may seem called for." Press Release, Department of State, Washington, July 16, 1935.

¹⁷ It will be noticed in Chapter V that the bilateral air agreements between the United States and certain European states follow the Paris Convention closely.

and lines,¹⁹ the interpretation of the term "freedom of innocent passage" has figured, and still figures, on the agenda of the C.I.N.A. In virtue of the second paragraph of Article 2, certain states have laid down special conditions, such as prior notice or authorization, for flight over their territory.²⁰

It has been suggested, but without effect, that this freedom of innocent passage conveys by implication the right of establishing and operating international airways and lines in those cases where it is unnecessary to provide any recognizable ground organization.

PROHIBITED ZONES

Article 3 reads as follows:

Each contracting State is entitled for military reasons or in the interest of public safety to prohibit the aircraft of the other contracting States, under the penalties provided by its legislation and subject to no distinction being made in this respect between its private aircraft and those of the other contracting States, from flying over certain areas of its territory.

Each contracting State may, as an exceptional measure and in the interest of public safety, authorise flight over the said areas by its national aircraft.

The position and extent of the prohibited areas shall be previously published. . . .

Each contracting State reserves also the right in exceptional circumstances in time of peace and with immediate effect temporarily to restrict or prohibit flight over its territory or over part of its territory on condition that such restriction or prohibition shall be applicable without distinction of nationality to the aircraft of all the other States.

Such decision shall be published. . . .

¹⁹ See Art. 15.

²⁰ For the rules established by certain contracting states for the admission within their territory of aircraft of the other contracting states, see Annex CQ, *Minutes of the Twenty-first Session, C.I.N.A.*, Rome, 1933.

It is worthy of notice that the restrictive provisions contained in the second and fourth paragraphs were added during the extraordinary session of the C.I.N.A. held in 1929, India recommending the first addition and Germany the second.²¹

Articles 3 and 15 give the contracting state the right to determine the route over which any air line must pass, including the points over which it must cross the frontier, aerodromes at which aircraft must land, and the routes between such aerodromes. Prohibition of flight over military areas is doubtless necessary and understandable. Each state, however, according to Article 3, is left completely free to define and delimit its own prohibited areas. The fact that no contracting parties, save Greece and the Saar Territory, have yet used the restrictive or prohibitive provision contained in the fourth paragraph of this Article, does not minimize the latent inconveniences or barriers to air transport, although certain critical political situations may require a drastic temporary control over national air navigation.²²

²¹ See Minutes of the Extraordinary Session of the C.I.N.A., Paris, June, 1929.

²² On January 9, 1935, just before the plebiscite, the president of the Saar Governing Commission issued the following order concerning flight over the Saar Territory: "Having regard to . . . Article 3 of the International Convention for Air Navigation of 13th October, 1919 (Amtsblatt No. 17 of 1st May, 1930);

"The Governing Commission orders as follows:

Article 1

"From 11th January, 1935, inclusive, to 15th January, 1935, inclusive, flight over the Saar Territory by any aircraft is prohibited. This prohibition does not apply:

"(a) To aeroplanes flying on commercial air lines already authorised.

"(b) To aeroplanes provided with a special authorisation issued by the Members of the Government Commission in charge of aeronautics.

"In respect of these aeroplanes, flight over the territory should be

The practice governing prohibited zones in Europe differs widely. For instance, Denmark, Belgium, and the Netherlands have no prohibited areas or air corridors, although specific target areas are described as dangerous during certain periods of the year. There are no air corridors in Great Britain, whose prohibited areas are strictly limited. A number of such zones have been set aside in France, for reasons of national security, chiefly on the eastern frontiers. There are only four corridors of approach between France and Germany, and only one land corridor for aircraft between France and Italy. There are a number of even more extreme cases. For instance, Italy prohibits flight over its entire northwestern, northern, and northeastern frontiers, providing only six air corridors over this extensive but largely mountainous territory. There are twelve other Italian prohibited areas. On the other hand, the Italian seacoast may be

effected following the most direct route, the only manoeuvre authorised being the customary circling of the aerodrome at the time of departure and landing.

Article 2

"All authorisations for flight, anterior to the present Ordinance, save those relating to the exclusive operation of commercial air lines, are suspended until the 15th January, 1935, inclusive." C.I.N.A. *Bulletin of Information*, No. 653, January 10, 1935. The Office of Civil Aviation of the Greek Air Ministry during the disturbances issued an order on March 6, 1935, prohibiting flight by foreign aircraft over Greek territory from that day until further notice. The order was lifted on March 12. C.I.N.A. *Bulletin of Information*, No. 661, March 7, 1935, and No. 662, March 14, 1935.

The following recommendation was made at the twenty-third session, C.I.N.A., Brussels, 1935:

"The Commission, in the interest of the development of international air navigation, recommended to the contracting States to create prohibited areas only to the minimum extent compatible with their interests; to endeavour, on the other hand, when they take decisions relating to the situation and extent of prohibited areas, not to interfere with international navigation, and to proceed, finally, in the light of the foregoing principles, to the revision of their prohibited areas at present existing."

crossed at any point except over a prohibited area, and there are relatively few such areas on the coast.²³ The Yugoslav prohibited areas are very extensive, notably those covering all the frontiers and penetrating inland all the way round to an average distance of some thirty miles. Air entry into the country may be made only at one point on each of its seven land frontiers. There is not even one air corridor up and down the long Yugoslav littoral, with the necessary exception of Zara, an Italian enclave. A wide band of prohibited territory in Sweden prevents flight over the entire Finnish-Swedish land frontier. Flight is barred over the Finnish-U.S.S.R. southeastern land frontier by a considerable Finnish prohibited area. Such zones in Latvia amount to over one-third of the total area of the country. In the absence of diplomatic relations, there is no air connection between Lithuania and Poland. Similar areas in Bulgaria, Roumania, and Turkey are particularly extensive.

Article 4 provides that aircraft finding themselves above a prohibited area must give the signal of distress provided in Annex D, landing as soon as possible at one of the nearest aerodromes of the state "unlawfully flown over."

²³ In the section entitled "Italy" in a report, *Entraves à la Navigation Aérienne*, by A. Plesman, General Manager of the Royal Dutch Air Lines (K.L.M.), presented to the Air Transport Committee, International Chamber of Commerce, Paris, November, 1934, the following appears: (Translation)

"Corsica-Sardinia"

"The prohibited zone between these two islands obliges aircraft to fly 50 miles over the sea; the actual width of the Strait [of Bonifacio] is only 8 miles.

"Strait of Messina"

"A corridor has been drawn across the prohibited zone above this Strait. This corridor increases the flying distance between Nicotera [Italy] and Catania [Sicily] from 88 to 104 miles and imposes a flight of 75 miles over the sea. The width of the Strait over which flying is forbidden is 4 miles."

Article 5,²⁴ to which reference has already been made in connection with adhesions to the Convention, was made still simpler in 1929:

Each contracting State is entitled to conclude special Conventions with non-contracting States.

The stipulations of such special Conventions shall not infringe the rights of the contracting Parties. . . .

Such special Conventions in so far as may be consistent with their objects shall not be contradictory to the general principles of the present Convention.

NATIONALITY OF AIRCRAFT

Article 6 provides that, in accordance with Annex A, aircraft possess the nationality of the state on the register of which they are entered. Registration must be made in accordance with the laws and special provisions of each contracting state, according to the new text of Article 7.²⁵ This Article originally ran as follows:

No aircraft shall be entered on the register of one of the contracting States unless it belongs wholly to nationals of such State.

No incorporated company can be registered as the owner of an aircraft unless it possesses the nationality of the State in which the aircraft is registered, unless the president or chairman of the company and at least two-thirds of the directors possess such nationality and unless the company fulfils all other conditions which may be prescribed by the laws of the said State.

Curiously enough, it was the desire to prevent the use of civil aviation in war which led the authors of the

²⁴ See *infra*, Chapter V, for bilateral agreements. The 1929 amendment to Article 5 of the Paris Convention was influenced to a certain extent by Article 5 of the Ibero-American Convention: "The contracting States shall be entirely free either to authorise or to prohibit the flight over their territory of aircraft possessing the nationality of a non-contracting State."

²⁵ Article 7 now runs precisely the same as Article 8 of the Pan-American Convention.

Convention to adopt this restrictive text, which raised serious difficulties, especially for private aircraft. The simpler, less categorical, but frankly "nationalistic" text mentioned above was adopted at the 1929 session. It would appear, therefore, that "international" registration of aircraft is not to be expected for the time being, at any rate.

Aircraft may not be registered in more than one state (Art. 8). The contracting states must exchange every month among themselves, and transmit to the C.I.N.A., copies of registrations and cancellations made during the preceding month (Art. 9). Aircraft engaged in international navigation must bear nationality and registration marks, as well as the name and residence of the owner, in accordance with Annex A (Art. 10).

CERTIFICATES OF AIRWORTHINESS AND COMPETENCY

Every aircraft must, in accordance with Annex B, be provided with a certificate of airworthiness issued or rendered valid by the state whose nationality it possesses (Art. 11). Likewise, the officers and the crew must, in accordance with Annex E, be provided with certificates of competency and licenses issued or rendered valid by the state whose nationality the aircraft possesses (Art. 12). Certificates of airworthiness and competency and licenses issued must be recognized as valid by the other states. Nevertheless, each state has the right to refuse to recognize, for the purpose of flights above its own territory, such certificates and licenses granted to one of its nationals by another contracting state (Art. 13). Wireless apparatus must not be carried by aircraft without a special license issued by the state whose nationality the aircraft possesses. Article 14 also establishes the principle that aircraft used in public transport and capable of

carrying at least ten persons must be equipped with wireless, the C.I.N.A. being empowered to determine the methods of employing such apparatus.

ESTABLISHMENT AND OPERATION OF INTERNATIONAL AIRWAYS AND LINES

Article 15, which is of singular importance to international air transport, provides:

Every aircraft of a contracting State has the right to cross the air space of another State without landing. In this case it shall follow the route fixed by the State over which the flight takes place. However, for reasons of general security, it will be obliged to land if ordered to do so by means of the signals provided in Annex D.

No aircraft of a contracting State capable of being flown without a pilot shall, except by special authorisation, fly without a pilot over the territory of another contracting State.

Every aircraft which passes from one State into another shall, if the regulations of the latter State require it, land in one of the aerodromes fixed by the latter. Notification of these aerodromes shall be given by the contracting States to the International Commission for Air Navigation and by it transmitted to all the contracting States.

Every contracting State may make conditional on its prior authorisation the establishment of international airways and the creation and operation of regular international air navigation lines, with or without landing, on its territory.

The first two paragraphs of Article 15 supplement to some extent the provisions of Article 2.²⁶

The question whether the obligation on the part of a contracting state to allow the aircraft of the other con-

²⁶ The Convention and Statute on Freedom of Transit, established by the League of Nations at Barcelona in 1921, applies only to traffic in transit. This term covers persons or freight transported across the territory of a state, of which the points of departure and destination lie outside the state. This traffic must be in transit by rail or waterways, traffic by air or road not being affected by the Convention.

tracting states to fly over the former's territory without landing, included the obligation to permit the establishment and operation of regular lines across the territory of the first state, has given rise to prolonged controversy and, in certain cases, to serious barriers to international air transport.

The third paragraph of Article 15 originally ran as follows: "The establishment of international airways shall be subject to the consent of the States flown over." The legal subcommission of the Aeronautical Commission insisted in 1919, contrary to the opinion of the British delegation, which had strongly opposed the proposed wording, that "the establishment of international air lines shall be subject to the consent of the States flown over." Because the British maintained their opinion, a compromise was agreed upon, "lines" being replaced by "airways." Difficulties, however, arose when the term had to be interpreted. At the extraordinary session of 1929, the German delegation proposed that the text, which was sometimes interpreted differently even by the states which were parties to the Convention, should be made more explicit, as follows: "The installation and operation of regular air lines from the territory of one contracting State to the territory of another contracting State or over the latter's territory, with or without intermediate landing, shall form the subject of a special agreement between the contracting States concerned." The British delegation opposed this proposed text, holding that previous authorization was required only for the establishment of an airway, that is to say, a regularly organized route provided with aerodromes and all the necessary facilities. However, the principle that previous authorization was required for the establishment of an international line, even without landing, was adopted by a vote of 27 to 4. The

dissenting states were the British Empire, the Netherlands, Sweden, and the United States of America. The text, according to the fourth paragraph of Article 15 cited above, was thereupon adopted. The British proposal to add to the fourth paragraph of Article 15: "This authorisation can only be refused on reasonable motives," was rejected by 19 votes to 11. After the decision on Article 15, the following recommendation was unanimously adopted: "The Commission decides to draw the attention of the Governments . . . to the spirit in which the Conference drew up the new text of the fourth paragraph of Article 15 and to recommend these Governments not to refuse the authorisation referred to in that paragraph otherwise than upon reasonable grounds."²⁷ The recommendation has been observed by some states.

Article 15 has always tended to restrict the freedom of international air transport. Companies are dependent upon the good will of each state, which may give one company authorization to fly over its territory and refuse such authorization to another, despite the fact that each company may have the nationality of a contracting state. A company subsidized by the state in question, or a company of an associated country, may be especially favored. A state might even prejudice the development of international lines by requiring that the service from frontier to frontier should be effected by a company of the particular state flown over. A contracting state is under no obligation to give reasons why such authorization should be withheld. It is important to notice that despite what is laid down in the second paragraph of Article 2: "Regulations made by a contracting State as

²⁷ For a discussion of the interpretation of Article 15, see Roper, *op. cit.*, pp. 141-148. See also *Minutes of the Extraordinary Session*, C.I.N.A., Paris, 1929.

to the admission over its territory of the aircraft of the other contracting States shall be applied without distinction of nationality," there is no indication in Article 15 that all contracting states must be treated alike. In practice, the establishment of international airways and lines continues to be a matter of negotiation between the governments of the states concerned, whether or not these states are parties to the Convention.²⁸

Several parties to the Convention, notably Great Britain, France,²⁹ and the Netherlands, particularly with reference to their imperial and intercontinental air services, have experienced serious difficulties from different interpretations of Article 15. Iran (Persia), which denounced the Convention only in 1933, interpreted Article 15 so strictly that the operation of the proposed British line from Cairo to Karachi was held up for over two years. A three years' authorization to fly along the Persian coast, subject to certain restrictions, was given in 1929. The Persian proposal to extend the authorization included a provision that Imperial Airways should use, in place of the coast route, an air corridor which the Shah's government proposed to establish through the mountainous heart of the country. This proposal was not accepted by the British, for purely practical reasons. In October, 1932, Imperial Airways shifted its route to the Arabian

²⁸ "Among these conditions, a great number are intended to ensure the uniformity of aerial law and to facilitate air traffic, and it is these that give the Convention its value; but certain among them limit the freedom of passage to such an extent that it is possible, by a strict interpretation, to reduce it [freedom of passage] to almost nothing." Albert Roper, Secretary-General of the C.I.N.A., "Recent Developments in International Aeronautical Law," *Journal of Air Law*, Chicago, 1930, p. 406; see also the same author's *La Convention Internationale du 13 octobre 1919*, Paris, 1930, p. 196.

²⁹ It will be noticed below that until late in 1934 France did not permit Imperial Airways to fly across its territory beyond Paris.

coast of the Persian Gulf.³⁰ Turkey has consistently declined to authorize international air lines to cross its Asiatic territory. In 1929, Imperial Airways instituted the London-Cairo service, later extended to India. The projected route was via Genoa-Naples-Corfu-Alexandria. Some years earlier, Great Britain had refused permission for an Italian company to fly over Egyptian territory.³¹ The Italian government would not permit Imperial Airways to enter Italy by sea from France although French and, later, Dutch aircraft were using this particular air route. The section between Basel and Genoa had, therefore, to be effected by train. The British accepted the Italian proposal that the former's line, after leaving Corfu, should touch at Tobruk in the Italian possession, Cyrenaica, before proceeding to Alexandria, and that an Italian company should fly along this route in the middle of the week, leaving the week-end services for the British. This established a less direct route, with a loss of half a day at Tobruk. After nearly a year's operation, the Italians proposed a pooling arrangement, which Imperial Airways did not accept. Consequently, the route was hurriedly shifted to Cologne-Nuremberg-Vienna-Belgrade-Skopljë-Salonika-Athens-Alexandria. Apart from the inconvenience of a total change of route, conditions were hazardous in the mountains between Skopljë and Salonika, necessitating a train instead of an air service during the winter.

Under an Anglo-Italian Convention relating to the establishment of air transport lines, signed on May 16, 1931, and ratified on December 30, 1932, Imperial Air-

³⁰ The French and the Dutch services to the East still operate through Iran on what appear to be short-time renewable permits, which were not acceptable to the British.

³¹ See *infra*, Chapter V.

ways was authorized to revert to the Genoa-Naples-Corfu route for one year and thereafter to operate with aeroplanes from Milan to Brindisi, thence across to Athens by flying boats, without having to call at Tobruk. Imperial Airways reverted to the former route from Genoa for a short period before deciding to use the thirty-four-hour train journey for its passengers, freight, and mail between Paris and Brindisi, realizing that it would be obliged to shift the Italian air route again the following year and that "the winter weather round Milan is bad, fog being very prevalent, and, in any case, the aeroplanes operating the Milan-Brindisi sector would be flying uneconomically."³² By a provisional agreement concluded on February 1, 1934, between the British and the Italian authorities, Imperial Airways received permission to fly down the coast to Naples, thence to Brindisi. Thus the French section remained the last link to be completed before the journey between Croydon and Capetown, or to and from the Far East, might be effected wholly by air.³³ The negotiations between Great Britain and France were the thorniest. The following account was given in *The Times* (London), on August 16, 1934, of the inconclusive negotiations between the British and French authorities:

It is understood that difficulties have arisen over the conditions on which the French Air Ministry would be prepared to allow British use of the Paris-Marseilles route. The British request for unrestricted use of the airway was based on the analogy of the arrangement which allows Air

³² Lt.-Col. H. Burchall, Assistant General Manager, Imperial Airways Ltd., "The Politics of International Air Routes," *International Affairs*, London, January-February, 1935.

³³ The first paragraph of the French law of May 16, 1930, states: (Translation) "The establishment of international airways, as well as the creation and operation of regular international air lines, will be subordinated to the prior authorisation of the Government."

France to fly without conditions over the British air route across India on the way to Saigon.

The British representatives demurred on principle to a proposal for mutual prohibition of the carrying of French passengers by Imperial Airways and of British passengers by Air France. On the French side it was then suggested that a pool of passenger receipts between Paris and Marseilles should be established and divided in fixed proportions, 60 per cent to be allotted to Air France and 40 per cent to Imperial Airways; with a similar pooling of Paris-London receipts in the proportion of 40 per cent for Air France and 60 per cent for Imperial Airways.

In support of this plan the French representatives pointed to the acceptance by the Dutch air lines of a similar arrangement on the East India route. They suggested also that in return for British acceptance of their proposals they should concede unrestricted passage across Indo-China to Imperial Airways for the extension to Hong-kong. It was agreed that at least 80 per cent of the traffic over the Paris-Marseilles section is now British.

In the last weeks of 1934, important developments followed in quick succession with the speed that one had hoped would always naturally be associated with the solution of problems of air transport.

At the annual meeting of Imperial Airways, held on November 5, 1934, the Chairman, the Rt. Hon. Sir Eric Geddes, made the following statement under the heading "Political Difficulties":⁸⁴

Last year I said that on both the India and Africa services the section that appeared to be least popular with the passengers is the rail sector between Paris and Brindisi, which, as you know, was adopted owing to the political objections to our service operating from France into Italy along the Mediterranean Coast. I was hopeful that when the objections which formerly prevented the Italian Government from giving our Government permission for us to operate

⁸⁴ *The Times*, London, November 6, 1934.

along this route were removed we might be able to fly from end to end of our Empire routes.

I very much regret to say that although the arrangements with Italy were satisfactorily concluded, a fresh and unexpected difficulty arose with France and our Government has not yet overcome it.

Permission to cross France was made conditional upon terms which we considered far too onerous having regard to what France obtains from the Empire, and, indeed, too onerous under any circumstances. Indeed the train journey to Brindisi is a special handicap to our company in all time schedules south and east of Cairo. That is something which everybody should remember when comparing our speed with that of others who are more favourably treated. I hope that some satisfactory solution of the present difficulty will shortly be reached between the Governments concerned. These political barriers which are temporarily lowered for special occasions, such as the Melbourne race, have unfortunately always been in our path.

On December 7, 1934, an air transport Convention was signed at Rome between the United Kingdom, India, and Italy, its duration being fixed at ten years. It was ratified about a fortnight later. Article 3 enumerates the two alternative routes which British aircraft may follow over Italian territory in operating services from England to the East and to South Africa. These routes are (1) Rome or Ostia, Naples (Malta), Tripoli, Bengasi, Tobruk and beyond; (2) Rome, Naples, Brindisi and beyond. A combination of these routes may also be made. For the purpose of operating these services, the British air transport companies have also the right to use the landing places or seaplane stations at Milan, Rimini, Rhodes, and Castelrosso.³⁵

³⁵ Italian air transport companies are entitled to operate regular services to the United Kingdom, Gibraltar, Malta, Cyprus, Aden, British Somaliland, and Palestine (including Transjordan). Such companies are also entitled to operate to the Sudan.

On December 12, 1934, the French Air Ministry announced that "as a result of the negotiations with the British authorities, aeroplanes serving the lines to India and the Cape will now be permitted to cross French territory via Paris and Marseilles." The announcement adds that an agreement may now be regarded as concluded³⁶ removing the last barrier in the way of the substitution of the air route for the two nights and a day hitherto spent in a train between Paris and Brindisi by Imperial Airways passengers, mail, and freight en route to Africa and Asia.

It would appear that the agreement, while authorizing the passage of Imperial Airways' machines between Paris and Marseilles, does not permit British aircraft to participate in *cabotage* (transport between two points in French territory), or even (in the absence of a pool between the British and French companies) in international transport between London and Marseilles.³⁷

According to the official time-table of the International Air Traffic Association for March, 1935, Imperial Air-

³⁶ *The Times*, London, December 13, 1934.

³⁷ "Unfortunately, the predominant note in the European orchestra during the last decade has been extreme nationalism, and this has undoubtedly militated against the successful growth of air transport. Unhappily, each national reservation or restriction invariably leads to a corresponding reprisal. . . . There can be no question that air transport will be unable to produce the best results until 'freedom of passage in time of peace' is given as world-wide application as it is to the passage of ships. . . .

"Yet national aspirations are natural and understandable, and while subsidies are in force artificial conditions will prevail and competition may influence the grant of the right of passage of a regular air service. We need to find a way to cope with this difficulty until the progress of aeronautical science makes subsidies no longer essential, when air services will become subject to the same influences as now affect shipping, and, it is hoped, will enjoy equal freedom. Possibly a temporary way (although it is only palliative) to meet the present difficulties would be to allow free passage to foreign air services for the carriage of their own national 'through' traffic;

ways services to Africa and Asia still used the thirty-four-hour railway connection between Paris and Brindisi. It was later announced that part of the Paris-Brindisi traffic of Imperial Airways would be carried by air from April 28 to September 30, 1935, it not having been decided whether this new route would be continued during the winter.³⁸ The I.A.T.A. time-table for October, 1935, announced that the Paris-Brindisi connection of Imperial Airways would be effected through the winter period by rail.

CABOTAGE

According to Article 16 of the Paris Convention, each contracting state "has the right to establish reservations and restrictions in favour of its national aircraft in connection with the carriage of persons and goods for hire between two points on its territory," such reservations being immediately published, etc.

The definition of "territory" follows from the definitions of Articles 1 and 40:

Article 1—... the territory of a State shall be understood as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto.

Article 40—... The territories and nationals of Protectorates or of territories administered in the name of the League of Nations, shall . . . be assimilated to the territory and nationals of the Protecting or Mandatory States.

Because this conception of air cabotage is very much more inclusive than that of the maritime coasting trade,

in short, to adopt for long-distance international lines a compromise between the accepted principle of 'cabotage' and the utopian policy of complete freedom." G. E. Woods Humphery, Managing Director of Imperial Airways, Ltd., *Shell Aviation News*, London, September, 1934.

³⁸ *The Times*, London, April 9, 1935.

the C.I.N.A. is at present considering a revision of Article 16, with a view to defining clearly and restricting the notion of air cabotage.

In the matter of negotiating with other contracting parties regarding the institution of air transport lines, Great Britain is at a certain disadvantage because of the fact that India and the self-governing Dominions each signed the Paris Convention separately, and were later each given separate votes on the C.I.N.A. For the purposes of the Convention, Great Britain (and its crown colonies, mandated territories, and protectorates), India, and the five self-governing Dominions are each considered as separate states. A British air line could not carry transport from France to Indo-China without infringing the principle of cabotage;³⁹ a French line operating between London and Dublin, or Capetown, or Bombay, or Sydney, or Wellington, or Quebec would not infringe this principle. It appears that France has been able to use "freedom of passage" over Indo-China as a bargaining point, whereas Great Britain is not in the same position as regards India.

Article 17 appears to open the road to bargaining, this being another indication that there is not always complete equality as between the contracting parties:

The aircraft of a contracting State which establishes reservations and restrictions in accordance with Article 16, may be subjected to the same reservations and restrictions in any other contracting State, even though the latter State does not impose the reservations and restrictions on other foreign aircraft.

³⁹ The second paragraph of the French law of May 16, 1930, provides: (Translation) "The commercial transport of passengers and freight between two points in French territory, or between France and the French colonies, is reserved to French aircraft, with the reserve that special and temporary derogations may be accorded by decree."

From Articles 15 and 16, it would appear that the Paris Convention tends to work less effectively for the air transport operator than for the private owner.

RULES TO BE OBSERVED ON DEPARTURE, WHEN UNDER
WAY, AND ON LANDING

Article 19 provides that every aircraft engaged in international navigation shall carry (1) a certificate of registration (Annex A); (2) an airworthiness certificate (Annex B); (3) certificates and licenses of officers and crew (Annex E); (4) a list of passengers, if any; (5) bills of lading and manifest of freight, if any; (6) log books (Annex C); (7) a special license, if equipped with wireless (Art. 14).

Upon the departure or landing of an aircraft, the authorities of the country shall have the right to visit the aircraft and verify the prescribed documents (Art. 21); aircraft of the contracting states shall be entitled to the same measures of assistance for landing, particularly in case of distress, as national aircraft (Art. 22); the salvage of aircraft wrecked at sea shall be governed by the principles of maritime law, in the absence of any agreement to the contrary (Art. 23); every aerodrome shall be open to the aircraft of the other contracting states and upon equal terms (Art. 24); each contracting state shall undertake to ensure that all aircraft flying over its territory shall comply with the regulations regarding lights, signals, traffic rules, etc., contained in Annex D, each state also undertaking the prosecution and punishment of persons contravening these regulations (Art. 25).

PROHIBITED TRANSPORT

Articles 26-29 deal with the question of prohibited transport. They forbid the carriage of explosives and of arms and munitions of war in international air navigation

by aircraft of the contracting states. No foreign aircraft is permitted to carry such articles between any two points in the same contracting state. The regulation of the use of photographic apparatus is left to the individual states. Any contracting state may also place restrictions upon the carriage of objects other than explosives, arms and munitions. Whenever the imposition of special regulations is left to the discretion of the contracting states, the C.I.N.A. must be immediately notified of such regulations.

STATE AIRCRAFT

State aircraft include military aircraft and aircraft exclusively employed in state service, such as posts, customs, and police.⁴⁰ All state aircraft other than military, customs, and police aircraft are treated as "private aircraft" and are therefore subject to the provisions of the Convention (Art. 30). An aircraft is regarded as a military aircraft if it is commanded by a person in military service detailed for that purpose (Art. 31). Military aircraft must not fly over the territory of another contracting state nor land thereon without special authorization. In case of such authorization, they enjoy, in principle, "in the absence of special stipulation," the privileges customarily accorded to foreign warships, except in cases where they are compelled to make a forced landing, or are summoned to land (Art. 32). According to Article 33, special arrangements between the states concerned "will determine in what cases police and Customs aircraft may be authorised to cross the frontier. They shall in no case be entitled to the privileges referred to in Article 32."

⁴⁰ While not obliged to do so, it is said that military, customs, and police aircraft usually follow the rules laid down for private aircraft in the Annexes to the Convention.

INTERNATIONAL COMMISSION FOR AIR NAVIGATION
(C.I.N.A.)

Article 34 determines the composition and functions of the C.I.N.A. Reference was made in the early part of this chapter to the amendments made to this Article. The C.I.N.A. is so important from the point of view of international organization that Chapter IV will be devoted to it.

FINAL PROVISIONS

By Article 35, the contracting states undertake to co-operate as far as possible in the following international measures:

(1) The collection and dissemination of statistical, current, and special meteorological information, in accordance with the provisions of Annex G.

(2) The publication of standard aeronautical maps, and the establishment of a uniform system of ground markings, in accordance with the provisions of Annex F.

(3) The use of wireless telegraphy in air navigation, the establishment of the necessary wireless stations, and the observance of international wireless regulations.

Article 36 provides that, besides the general customs provisions, which are the subject of an agreement in Annex H, each contracting state is entitled to conclude special protocols as between state and state, in respect of customs, police, mail, and other questions connected with air navigation.⁴¹

Article 37 provides that "in the case of a disagreement between two or more States relating to the interpretation of the Convention, the question in dispute shall be determined by the Permanent Court of International Justice." Disagreements relating to the technical regulations an-

⁴¹ See *infra*, Chapter V, for bilateral agreements.

nexed to the Convention are settled by the decision of the C.I.N.A., by a majority of votes. In case the difference involves the question whether the interpretation of the Convention or that of a regulation is concerned, final decision is made by arbitration as provided for in the first paragraph of Article 37. According to Article 38, the provisions of the Convention, in case of war, shall not affect the freedom of action of the contracting states either as belligerents or as neutrals.

It is important to notice that according to Article 39, Annexes A-H form a complement to the Convention and have the same effect as the Convention itself. Significant references are made to the Annexes in fourteen Articles of the Convention.⁴²

Originally, a distinction was made in Articles 41 and 42 between Powers which did not take part in the Great War, and belligerents which were non-signatories of the Convention. Article 41 states that any state shall be permitted to adhere to the Convention, adhesions being notified through the diplomatic channel of the French government. Article 42 has been deleted. Denunciations, notification of which are made through the same channel, do not take effect until at least one year after the giving of notice (Art. 43). Ratifications of signatories are addressed to the French government, taking effect forty days from the date of the deposit of ratification.

The Convention was drawn up in English, French, and Italian. In case of divergencies of interpretation of any of the texts, the French text is to prevail.

ANNEXES TO THE CONVENTION

The originators of the Convention wisely realized that the unification of technical regulations was indispensable

⁴² Articles 4, 6, 10, 11, 12, 13, 15, 19, 25, 34, 35, 36, 37, and 39.

to the practical working of such an international instrument, perhaps most of all where regular air transport was concerned. Consequently, a number of technical regulations were annexed to the Convention, the C.I.N.A. being given special authority over them. There are very real advantages in placing regulations of technical matters in Annexes to a general convention, these being subject to easy and frequent amendment, without resorting to the slower process of unanimous ratification like the Convention itself. In the official text of the Convention,⁴³ 15 pages are devoted to the Convention, and 106 pages to the technical Annexes. Annex A is concerned with the marking of aircraft and the registration of aircraft call signs. The C.I.N.A. decided in 1935 to enforce certain parts of its regulations concerning the minimum requirements for airworthiness certificates (Annex B). These parts, relating to landplanes, seaplanes and amphibians, were to go into force for all new types of aircraft of this "normal category" in respect of which application was made for a certificate of airworthiness on and after January 1, 1936.⁴⁴ Annex C (log books) prescribes the information to be contained in the journey, aircraft, engine, and signal logs. Annex D, one of the most elaborate of the Annexes, lays down rules as to lights and signals, and rules for air traffic. They are based to a certain extent on maritime rules. Annex E, on the

⁴³ Edition of March, 1935.

⁴⁴ The British Air Council accepted the following recommendation of the Committee on Control of Private Flying and Other Civil Aviation Questions: "The representatives of the United Kingdom on the International Commission for Air Navigation should continue to press for the prescribing of international airworthiness standards in broad terms only, and also for international recognition of freedom from the certificate of airworthiness for private flying when this concession has justified itself by results in this country." *Report of the Committee*, London, July, 1934, p. 7.

operating crew, prescribes (1) regulations for the issue and renewal of licenses, medical examinations, and certificates of competency; (2) models of licenses and certificates of competency for international navigation; (3) composition of the operating crew. Annex F deals with aeronautical maps and ground markings. The most detailed of all the Annexes is Annex G dealing with the collection and dissemination of meteorological data. This includes the classification and exchange of information; the exhibition and supply of information at aerodromes; and the meteorological organization of international airways.

Annex H lays down certain customs⁴⁵ provisions which are to be observed by the contracting parties. These provisions are supplemented by national laws and regulations, which must, however, be adjusted to meet the provisions. Annex H is not treated like the other Annexes to the Convention as regards amendment. It is considered as a separate agreement, according to the terms of Article 36 of the Convention. Any alteration to Annex H, whether proposed by a state or by the C.I.N.A., may be made only with the assent of all the contracting states. A revised text of Annex H, which had been under consideration for several years, was approved and a protocol of amendment was established by the C.I.N.A. on June 1, 1935.⁴⁶

⁴⁵ Generally speaking, European states do not require that regular air transport must make the first landing at the customs aerodrome nearest to the frontier. In fact, Paris, Cologne, Berlin, London, etc., are recognized as customs aerodromes where aircraft engaged in international traffic may make their initial landings. If there are transfers of passengers or freight from one machine to another of different nationality at a customs aerodrome, it is usually for traffic and not for political reasons.

⁴⁶ See *infra*, Chapter IV, for a discussion of the relations between the C.I.N.A. and the I.A.T.A. regarding Annex H. By Article 20 of the new text of Annex H the contracting states are permitted "to

Annex I (radio communications) is at present under preparation by the C.I.N.A. It will include a large part of the provisions of the optional Regulations for the International Radioelectric Service of Air Navigation, adopted by the C.I.N.A. in 1931, amended in accordance with the Madrid Convention on Telecommunications (1932).

Published in the same volume as the text of the Convention and its Annexes are a number of resolutions and regulations. First, there are the "resolutions and regulations adopted by the International Commission for Air Navigation and operative as regards the contracting States in like manner as the Annexes of the Convention," entitled as follows: (1) Resolutions concerning the form, arrangement, and method of keeping the journey log book; (2) Regulations laying down the procedure to be followed with regard to the settlement of disagreements between states concerning Annexes to the Convention; (3) Resolutions settling the form of the certificates of airworthiness and of competency and of the licences referred to in Article 13 of the Convention; (4) Regulations concerning the employment of wireless apparatus in aircraft.

Secondly, there are the "regulations adopted by the International Commission for Air Navigation and communicated to the States signatory and non-signatory to the Convention with the request that they put them into force as speedily and as completely as possible," entitled as follows: (1) Regulations concerning the minimum requirements for airworthiness certificates; (2) Regulations concerning the international employment of symbols and terms used in aeronautical technology; (3) Reg-

establish international aerodromes combining the customs services of two or more States."

ulations concerning emergency medical boxes on board aircraft; (4) Regulations concerning an international standard atmosphere; (5) Regulations for the radioelectric service of air navigation. While these particular regulations are, at present, only optional, it is interesting to notice that non-contracting as well as contracting states are invited to conform to them.

The actual technical regulations, or parts of them, laid down in the Annexes to the Convention are not infrequently, for purely practical purposes, employed by non-contracting countries, e.g., Annex D on rules as to lights and signals and for air traffic. At the twenty-second session of the C.I.N.A., held at Lisbon in 1934, the Secretary-General announced that, despite the unlikelihood of an immediate German adhesion to the Convention, Germany had, from May 1, 1934, officially adopted the regulations for the marking of aircraft in conformity with Annex A.⁴⁷

⁴⁷ Although Turkey has never at any period been party to the Paris Convention, the Regulations on Air Navigation in Turkey (September 9, 1925) in four Articles refer specifically to this Convention: e.g., Art. 7 (Translation): "The special signals used by non-military aircraft as well as the nationality marks of the Powers signatories of the International Air Convention are indicated in list no. 1, attached"; Art. 10: "Foreign aircraft which cross the frontiers of the Turkish Republic must observe all the laws and regulations of the country, as well as the provisions of the International Air Convention of October 13th, 1919."

In addition to the Regulations of 1925, it appears that the Regulations (previous to the Great War) on zones prohibited to air navigation (May 24, 1914), containing several exceedingly severe provisions, are still in force. *Rapport de la Commission des Détroits à la Société des Nations*, Istanbul, 1935, pp. 59-72. It was noted in the discussion of Article 3 of the Paris Convention that Turkey had not authorized international air lines to cross its Asiatic territory. Private foreign flight in Turkey is subject to many restrictions.

The Pan-American Commercial Conference (Buenos Aires, 1935) recommended that the air conference to be held at Lima in 1936 should consider the adoption by American countries of Annex G to the Paris Convention and the C.I.N.A. wireless regulations.

IV

THE INTERNATIONAL COMMISSION FOR AIR NAVIGATION

It is not possible to include within the scope of this study a detailed examination of all the international organizations dealing in one way or another with aviation. Because the course of air transport in Europe is directed by the state, emphasis will be laid on bodies established or supported by governments, especially those whose activities, like the International Commission for Air Navigation (C.I.N.A.), exclusively concern aviation. Their functions are of particular importance.

The following table has been established as a guide:

TABLE OF INTERNATIONAL ORGANIZATIONS

*Bodies whose activities are
confined to air questions:*

| | | |
|--|---|---------------|
| International Commission for Air Navigation (C.I.N.A.) (Paris) | } | <i>Public</i> |
| Operational Sub-Commission | | |
| Legal Sub-Commission | | |
| Wireless Sub-Commission | | |
| Meteorological Sub-Commission | | |
| Medical Sub-Commission | | |
| Maps Sub-Commission | | |
| Materials Sub-Commission | | |
| Committee on Standards | | |
| Committee of Experts on Customs Questions | | |
| International Conference on Private Air Law | | |
| Comité International Technique d'Experts | | |

*Bodies whose activities are
confined to air questions:*

| | | |
|--|---|----------------|
| Juridiques Aériens (C.I.T.E.J.A.) (Paris) | } | <i>Public</i> |
| Four Commissions | | |
| International Air Conference (C.A.I.) | | |
| Operational Committee | | |
| Wireless Committee | | |
| Meteorological Committee | | |
| Committee of Experts on Customs Questions | | |
| Mediterranean Air Conference (C.A.M.) | | |
| Operational Committee | | |
| Meteorological Committee | | |
| Radiotelegraphic Committee | | |
| Baltic and Balkan States Air Conference | | |
| Air Mail Conferences (occasional) | | |
| International Air Congresses (occasional) | | |
| International Air Traffic Association (I.A.T.A.) (The Hague) | | |
| Cash Examination Committee | } | <i>Private</i> |
| Combined Transport Committee | | |
| Legal Committee | | |
| Postal Committee | | |
| Radiotelegraphic Committee | | |
| Technical Committee | | |
| Unification of Accounts Committee | | |
| International Union of Aviation Insurers (London) | | |
| Air International Register (A.I.R.) (Paris) | | |
| Fédération Aéronautique Internationale (F.A.I.) (Paris) | | |
| Comité Juridique International de l'Aviation (C.J.I.A.) (Paris) | | |

*Bodies whose activities are not
confined to air questions:*

League of Nations (Geneva)

Organisation for Communications and
Transit

General Conference

Advisory and Technical Committee for
Communications and Transit

Air Transport Co-operation Committee

Special Sub-Committee to study the
question of the constitution and op-
eration of a main network of per-
manent air routes

Conference for the Reduction and Limita-
tion of Armaments

General Commission

Air Committee

International Labour Organisation

International Labour Office

International Union on Telecommunica-
tions

International Conference of the Union

International Bureau of the Union
(Berne)

Universal Postal Union

Universal Postal Congress

International Bureau of the Union
(Berne)

International Office of Public Hygiene
(Paris)

Quarantine Commission on Air Naviga-
tion

International Meteorological Organisation
(De Bilt, the Netherlands)

} *Public*

*Bodies whose activities are not
confined to air questions:*

| | |
|--|------------------|
| International Hydrographic Bureau (Monaco) | } <i>Public</i> |
| International Chamber of Commerce (Paris) | |
| Air Transport Committee | } <i>Private</i> |
| International Federation of National Standardising Associations (Zürich) | |
| Comité I.S.A.-20-Aéronautique | |
| International Commission on Illumination (Teddington, England) | |
| International Law Association | |
| Air Law Committee | |

It will be noted that there is a multiplicity of international organizations. It has not infrequently been remarked that these bodies are too numerous and that the same experts are often found at different conferences, commissions, or committees, even, at times, proceeding from one to another to discuss identical problems or closely related aspects of somewhat similar problems. It is not the present task to weigh the evidence for and against such assertions.¹ It is true that, for instance, one may sometimes find the same experts in the C.I.N.A., the C.I.T.E.J.A., the International Air Conference, and the Air Transport Co-operation Committee of the League of Nations; or the same experts at sessions of the International Air Traffic Association and the Air Transport Committee of the International Chamber of Com-

¹ See remarks of M. Hérold, Swiss delegate, at the Third General Conference on Communications and Transit, Geneva, 1927, *Records and Texts of the Conference*, pp. 44-45; also Alfred Wegerdt, "La Réglementation Internationale de la Navigation Aérienne," *Revue Aéronautique Internationale*, Paris, March, 1933, pp. 47-54, in which, in a critical discussion of international organizations, the author pays tribute to the special importance of the C.I.N.A.

merce. One might even say that this situation is almost inevitable under the conditions at present governing air navigation.

THE C.I.N.A.: ITS POWERS AND ACTIVITIES

In the preceding chapter, it was noted that the Paris Convention abounds in important concessions to the prevalent conception of state sovereignty, but at the same time, there is to be found the basis, however incomplete, of the international organization of air navigation. This is most striking in the Annexes, which are an integral part of the Convention. Full authority over the technical Annexes, save that on customs, is vested in the C.I.N.A. Of the international bodies whose activities are directed to aviation alone, the C.I.N.A. is the most important.²

The C.I.N.A. was first convened on July 11, 1922,

² The Congress of the Universal Postal Union consists of plenipotentiary delegates appointed by governments (Article 13, Cairo Convention, effective January 1, 1935). The Acts of the Congress have to be ratified and are valid only for the states which have ratified them (Article 14). Articles 19-23 of the Cairo Postal Convention contain the measures for the submission and examination of proposals between the Congresses (the Congress meets every five years) and the different methods of government action necessary to modify or interpret (apart from the arbitration foreseen in Article 11) certain provisions of the Convention during this period. It would appear from Articles 11, 13, 15, 17, 18, 19, 20, 22, 24, and 25 of the Cairo Convention that the powers and activities of the International Bureau of the Union (a permanent body established at Berne) are distinctly less than those of the C.I.N.A., whose decisions relative to the technical regulations annexed to the Paris Convention, as indicated above, are taken by a majority of (C.I.N.A.) votes, and are, nevertheless, binding on all the contracting states, without further examination by them, four months after they have been duly notified by the C.I.N.A. For postal questions, see *infra*, Chapter VII.

"As regards the regulation of civil aviation and air traffic, it had been thought necessary, contrary to all principles of international law, to invent an international organ (the C.I.N.A.) with powers of legislation, in order that the provisions applicable to civil aviation might be always adapted to a situation which was constantly changing." M. de Brouckère, Belgian delegate, in the Air Committee, Disarmament Conference, February 20, 1933.

the date of the entry into force of the Convention. It fixed its seat at Paris, decided to meet at regular intervals, organized its permanent Secretariat and set up, for the study of technical questions, the following seven sub-commissions: Operational, Legal, Wireless, Meteorological, Medical, Maps, and Materials. The Commission is composed of the representatives of the governments of the states parties to the Convention, the subcommissions comprising experts designated by these representatives. The C.I.N.A., which first met every four months, then half yearly, now holds a session every twelve months, the twenty-three sessions having been convened in various European cities, most often at Paris and London. The subcommissions meet in the intervals between the sessions.

A delegation, desirous that a new question should be studied by the Commission, normally submits it seventy-five days before a session, with a note containing a statement of the subject matter. During the course of the session, the C.I.N.A. may either deal with the item at once, may adjourn its decision, or may refer the item for study to one or more of the subcommissions. If it is referred for study, a "Rapporteur," chosen for his special competency, is charged with the preparation of a report to serve as the basis of study in the subcommission. After discussion, a report is prepared by the subcommission, containing a draft resolution, which is submitted for advice to the Legal Sub-Commission if it involves modifications of the texts in force. All the reports of the subcommissions on the items on the agenda of a session of the C.I.N.A. are distributed to the members of the Commission seventy-five days before the opening of the session. There is thus ample time for each government to study the agenda of the forthcoming session of the

C.I.N.A. and to consult with the national bodies directly or indirectly interested in such questions.

In the preceding chapter, especially when indicating amendments to the Convention, several references were made to the C.I.N.A. In the analysis of the Convention, Article 34, which establishes the C.I.N.A., was not given in full because it was considered more appropriate to reproduce this Article here. The duties of the C.I.N.A. are explicitly set forth in Article 34, which reads as follows:

There shall be instituted, under the name of the International Commission for Air Navigation, a permanent Commission placed under the direction of the League of Nations.

Each contracting State may have not more than two representatives on the Commission.

Each State represented on the Commission shall have one vote.

The International Commission for Air Navigation shall determine the rules of its own procedure and the place of its permanent seat, but it shall be free to meet in such places as it may deem convenient.

The duties of this Commission shall be:

a) To receive proposals from or to make proposals to any of the contracting States for the modification or amendment of the provisions of the present Convention, and to notify changes adopted;

b) To carry out the duties imposed upon it by the present Article and by Articles 9, 13, 14, 15, 16, 27, 28, 36, and 37 of the present Convention;

c) To amend the provisions of the Annexes A-G;

d) To collect and communicate to the contracting States information of every kind concerning international air navigation;

e) To collect and communicate to the contracting States all information relating to wireless telegraphy, meteorology and medical science which may be of interest to air navigation;

f) To ensure the publication of maps for air navigation in accordance with the provisions of Annex F;

g) To give its opinion on questions which the States may submit for examination.

Any modification of the provisions of any one of the Annexes may be made by the International Commission for Air Navigation when such modification shall have been approved by three-fourths of the total votes of the States represented at the Session and two-thirds of the total possible votes which could be cast if all the States were represented. Such modification shall become effective from the time when it shall have been notified by the International Commission for Air Navigation to all the contracting States.

Any proposed modification of the Articles of the present Convention shall be examined by the International Commission for Air Navigation, whether it originates with one of the contracting States or with the Commission itself. No such modification shall be proposed for adoption by the contracting States, unless it shall have been approved by at least two-thirds of the total possible votes.

All such modifications of the Articles of the Convention (but not of the provisions of the Annexes) must be formally adopted by the contracting States before they become effective.

The expenses of the International Commission for Air Navigation shall be borne by the contracting States in the proportion fixed by the said Commission.

The expenses occasioned by the sending of technical delegations will be borne by their respective States.

Many and varied duties thus devolve upon the Commission. It has, first of all, to discuss all proposals for the modification of the Articles of the Convention, whether such proposals originate with a contracting state or with the C.I.N.A. itself. No such modification may be proposed for adoption by the contracting states unless it has been approved by at least two-thirds of the total possible votes. Modifications requested by a non-contracting state, or by any person or organization outside the Commission, may be considered only if one of the

contracting states, or the C.I.N.A. itself, advances the matter on its own account.

The provisions imposing certain duties upon the C.I.N.A. read as follows:

Article 9—The contracting States shall exchange every month among themselves, and transmit to the International Commission for Air Navigation referred to in Article 34, copies of registrations and of cancellations of registrations which shall have been entered on their official registers during the preceding month.

Article 13—Certificates of airworthiness and of competency and licences issued or rendered valid by the State whose nationality the aircraft possesses, in accordance with the regulations established by Annex B and Annex E and hereafter by the International Commission for Air Navigation, shall be recognised as valid by the other States. . . .

Article 14— . . . Every aircraft used in public transport and capable of carrying ten or more persons shall be equipped with sending and receiving wireless apparatus when the methods of employing such apparatus shall have been determined by the International Commission for Air Navigation.

This Commission may later extend the obligation of carrying wireless apparatus to all other classes of aircraft in the conditions and according to the methods which it may determine.

Article 15— . . . Every aircraft which passes from one State into another shall, if the regulations of the latter State require it, land in one of the aerodromes fixed by the latter. Notification of these aerodromes shall be given by the contracting States to the International Commission for Air Navigation and by it transmitted to all the contracting States. . . .

Article 16—Each contracting State shall have the right to establish reservations and restrictions in favour of its national aircraft in connection with the carriage of persons and goods for hire between two points on its territory.

Such reservations and restrictions shall be immediately published, and shall be communicated to the International

Commission for Air Navigation, which shall notify them to the other contracting States.

Article 27—Each State may, in aerial navigation, prohibit or regulate the carriage or use of photographic apparatus. Any such regulations shall be at once notified to the International Commission for Air Navigation, which shall communicate this information to the other contracting States.

Article 28—As a measure of public safety, the carriage of objects other than those mentioned in Articles 26 and 27 may be subjected to restrictions by any contracting State. Any such regulations shall be at once notified to the International Commission for Air Navigation, which shall communicate this information to the other contracting States.

Article 36— . . . Nothing in the present Convention shall be construed as preventing the contracting States from concluding, in conformity with its principles, special protocols as between State and State in respect of customs, police, posts and other matters of common interest in connection with air navigation. Any such protocols shall be at once notified to the International Commission for Air Navigation, which shall communicate this information to the other contracting States.

Article 37— . . . Disagreement relating to the technical regulations annexed to the present Convention shall be settled by the decision of the International Commission for Air Navigation by a majority of votes.

In case the difference involves a question where the interpretation of the Convention or that of a regulation is concerned, final decision shall be made by arbitration as provided in the first paragraph of this Article.

Lastly, there are the Annexes, which, in accordance with Article 34, the International Commission for Air Navigation is required to amend when necessary. Here the C.I.N.A.'s powers are impressive. The Annexes relate to:

Annex A. The marking of aircraft and the registration of call signs

Annex B. Certificates of airworthiness

Annex C. Log books

Annex D. Rules as to lights and signals; air traffic rules

Annex E. Operating crew

Annex F. Aeronautical maps and ground markings

Annex G. Collection and dissemination of meteorological information

Although it is not mentioned in Article 34 of the Convention, paragraph 3 of Annex H instructs the C.I.N.A. to communicate to the contracting states all necessary information on customs aerodromes.

With regard to amendments to Annexes A-G of the Convention,³ the C.I.N.A. has executive powers, inasmuch as it can modify the provisions of these Annexes when such modification is approved by the majority fixed in Article 34 of the Convention. The approval of the governments is not necessary, as it is in the case of amendments of the Articles of the Convention and of Annex H (customs). In fact, the C.I.N.A., at each of its sessions, makes a certain number of amendments to the Annexes, such decisions entering into force four months after the notification sent by the Secretary-General to each of the contracting states. The importance and the wide range of the activity of the C.I.N.A. in this respect may be seen by a glance at the records of any one of its twenty-three sessions.

By the terms of Article 37 of the Convention, the C.I.N.A. is competent to settle disagreements between contracting states relating to the technical regulations annexed to the Convention.

As a source of documentation and information, the scope of the C.I.N.A. is necessarily universal because it receives data from numerous states which are non-parties to the Convention, and distributes documents and infor-

³ Some indications of the Annexes to the Convention were given in Chapter III, *supra*.

mation to all states.⁴ Charged by various Articles of the Convention with the duty of communicating to the contracting states technical decisions taken by each of them, and of collecting and communicating, according to Article 34 (d) and (e), information on air navigation, as well as on wireless telegraphy, meteorology, and medical science of interest to air navigation, the C.I.N.A. has organized a centralization and distribution service. Decisions taken by the contracting states are centralized by the C.I.N.A. which notifies the member governments. Such decisions are published in the *Official Bulletin* or in the *Bulletin of Information*, together with the regulations and information mentioned above.

The *Bulletin of Information*, which is published weekly in two editions, English and French, is planned as follows:

I. *Conventions; laws; regulations.* Conventions, agreements and arrangements relating to air navigation concluded by contracting states with non-contracting states in conformity with Article 5 of the Convention. Conventions between states not parties to the Convention. Special protocols between contracting parties in respect of customs, police, mail, and other matters of common interest, as provided for in Article 36. National laws. National regulations relating to the carriage and use of photographic apparatus, prohibited transport, the con-

⁴ E.g., C.I.N.A. *Bulletin of Information* No. 625 (July 26, 1934) contains, in brief, the following data: Hungary (non-contracting state), ordinance relating to navigation by foreign aircraft; India (contracting state), register of aircraft for April, 1934; Germany (non-contracting), seven items on air traffic regulations; Free City of Danzig (non-contracting), one item on air traffic; Egypt (non-contracting), two items, same; France (contracting), nine items, same; the Netherlands (contracting), five items, same; Great Britain (contracting), series of notices to aircraft owners and ground engineers, air traffic statistics for 1933.

communications of importance to the working of the League at times of emergency;⁶ (3) illicit traffic in narcotic drugs by aircraft, the last-named at the request of the Advisory Committee on Traffic in Opium and other Dangerous Drugs, through the intermediary of the League's Transit Section.

The C.I.N.A., therefore, acts at the same time as:

A council responsible for supervising the application of the Convention and ensuring its normal evolution by proposing from time to time to the contracting States the amendments required by the development of international air navigation;

A sort of international parliament with the power at all times to adapt technical regulations to the requirements of air traffic;

A tribunal for the settlement in the first and last resort of differences which may arise between the contracting States in regard to the interpretation of the technical regulations which it is empowered to issue;

An advisory committee which gives opinions on questions that those States may submit for its examination;

An organ for the collection and dissemination of all information which is indispensable to air navigators.⁷

This means that the C.I.N.A. is endowed with administrative, legislative, executive, and judicial powers, as well as being an advisory body and a centre of documentation.

With the entering into force in 1933 of the 1929 amendments to the Convention, any remnant of the inequality of the powers of the contracting states represented on the C.I.N.A. disappeared.

In accordance with Article 34 of the Convention, the

⁶ *Systematic Survey of the Régime of Communications of Importance to the Working of the League of Nations at Times of Emergency*, Organisation for Communications and Transit, League of Nations, 1934, 101 pp. See *infra*, Chapter VIII.

⁷ *What the I.C.A.N. Is*, C.I.N.A., Paris, 1935, p. 11.

expenses of the Commission and its Secretariat are borne by the contracting states, the annual budget being voted by the Commission. For the year 1936, the budget is 1,162,000 French francs, the contribution of the various contracting states being fixed according to the five classes in which they have been placed. The relative aeronautical position of the country is one of the chief criteria in the determination of its contribution to the C.I.N.A. budget.⁸

| ⁸ Class | State | Units | Contribution |
|--------------------|-----------------------|-------|--------------|
| Class 5 | Spain | 5 | 70,000 |
| | France | 5 | 70,000 |
| | Great Britain | 5 | 70,000 |
| | Italy | 5 | 70,000 |
| | Japan | 5 | 70,000 |
| Class 4 | Argentine Republic | 4 | 56,000 |
| | Netherlands | 4 | 56,000 |
| Class 3 | Belgium | 3 | 42,000 |
| | Canada | 3 | 42,000 |
| | Denmark | 3 | 42,000 |
| | India | 3 | 42,000 |
| | Poland | 3 | 42,000 |
| | Portugal | 3 | 42,000 |
| | Roumania | 3 | 42,000 |
| | Sweden | 3 | 42,000 |
| | Switzerland | 3 | 42,000 |
| | Czechoslovakia | 3 | 42,000 |
| | Yugoslavia | 3 | 42,000 |
| Class 2 | Australia | 2 | 28,000 |
| | Chile | 2 | 28,000 |
| | Greece | 2 | 28,000 |
| | Irish Free State | 2 | 28,000 |
| | Union of South Africa | 2 | 28,000 |
| Class 1 | Bulgaria | 1 | 14,000 |
| | Finland | 1 | 14,000 |
| | Iraq | 1 | 14,000 |
| | Norway | 1 | 14,000 |
| | New Zealand | 1 | 14,000 |
| | Siam | 1 | 14,000 |
| | Uruguay | 1 | 14,000 |
| Total | | 83 | 1,162,000 |

Exposé of Items on the Agenda, twenty-third session, C.I.N.A., Brussels, 1935, p. 33.

RELATIONS WITH OTHER ORGANIZATIONS

According to paragraph 1 of Article 34, the C.I.N.A. is "a permanent Commission placed under the direction of the League of Nations."⁹ In practice, the C.I.N.A. is autonomous. The Secretary-General of the Advisory and Technical Committee for Communications and Transit is invited *ad audiendum* to attend the sessions of the C.I.N.A. and its subcommissions; likewise the Secretary-General of the C.I.N.A. is invited to attend meetings of the Advisory and Technical Committee and of any committees or subcommittees of the Transit Organisation that might be of interest to the C.I.N.A. The necessary technical discussions with regard to the questions on which the C.I.N.A. advised the Council,¹⁰ were carried out between the Transit Organisation and the C.I.N.A.

In addition to its relations with the League of Nations, which are of a special character, the C.I.N.A. keeps in effective touch with the various international bodies listed at the beginning of this chapter, the close collaboration with those bodies which are of a specifically legal and technical nature being especially fruitful. The continuous and intimate coöperation through a number of years between the C.I.N.A. and the International (C.A.I.) and Mediterranean (C.A.M.) Air Conferences

⁹ This follows from the first paragraph of Article 24 of the Covenant of the League of Nations: "... All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League of Nations." The relations with the League of Nations are defined in Article 25, Administration of the Commission, and Resolution No. 19 adopted at the first session of the C.I.N.A., Paris, July 11-28, 1922 (Official Bulletin No. 1, pp. 8, 23); the relations with the Advisory and Technical Committee for Communications and Transit are defined by Resolution No. 20 of the same session (*ibid.*, p. 23).

¹⁰ *Supra*, pp. 91-92.

and the International Meteorological Organisation has served, in part, to prepare the adherence to the Convention of non-contracting states and to bring about a basic unity in technical air organization for Europe as a whole. The relations between the C.I.N.A. and these three bodies have never been defined. These relations are assured, in a practical way, by the Secretary-General of the C.I.N.A., who attends their meetings, and by the fact that the same experts take part in the deliberations of two, or even three, of these organizations. For example, decisions are never taken by the C.I.N.A., the C.A.I., and the C.A.M. which would not be in harmony with those of the International Meteorological Organisation.¹¹ The Secretary-General of the C.I.N.A. was present at the meetings of the Baltic and Balkan States Air Conference, held at Warsaw in 1934 and 1935.

At its twentieth session in 1932, prior to the International Conference on Telecommunications held at Madrid in the same year, the C.I.N.A. decided to present to the Conference proposals concerning modifications to the Washington Convention (1927) and the distribution of wave-lengths to be reserved for world air navigation. The Secretary-General was instructed to communicate these new proposals to the contracting states and to the Bureau of the International Union on Telecommunications at Berne, with the request that they be transmitted as soon as possible to all the governments participating in the Madrid Conference. The C.I.N.A. convened a conference of wireless experts of contracting and non-contracting states in July, 1932, several weeks before the Madrid Conference. Of sixteen states represented at this C.I.N.A. Conference, eleven were contracting and five were non-contracting, namely, the United States of

¹¹ Communicated by the Secretary-General of the C.I.N.A., 1934.

America, Egypt, Germany, Spain, and Switzerland (the last two are now parties to the Convention).¹² At the twenty-first session of the C.I.N.A., held in 1933, the Wireless Sub-Commission was charged to prepare for the next session of the Commission a report on the modifications to be made in the Annexes to the Convention and in the Regulations for the International Radioelectric Service of Air Navigation (C.I.N.A.) to harmonize them with the International Convention on Telecommunications (1932) and the regulations thereto annexed.¹³ The necessary modifications were adopted at the twenty-second session, held in 1934.¹⁴ Annex I (radiocommunications) to the Paris Convention is under preparation.

In the European area there is evidence of similar coöperation. Of three European wireless conferences convened by the C.I.N.A. previous to 1934, the first was held at Berlin, capital of a non-contracting state, with the permission of the German air authorities, immediately after the International Air Conference (C.A.I.) in January, 1933. At this wireless conference, preparations were made for the European Conference on Radiocommunications held at Lucerne in May, 1933. In view of the entry into force on January 1, 1934, of the International Convention on Telecommunications (Madrid, 1932) and the European Broadcasting Convention (Lucerne, 1933), a second European wireless Conference, held at Paris in November, 1933, prepared a plan for the distribution of wavelengths allotted to the air services in the European area. A third European wireless conference was convened by the C.I.N.A. at Warsaw in September, 1934. Contracting

¹² *Official Bulletin* No. 20, C.I.N.A., 1932, pp. 61-63.

¹³ *Review of the Twenty-first Session*, C.I.N.A., Rome, 1933, p. 76.

¹⁴ *Review of the Twenty-second Session*, C.I.N.A., Lisbon, 1934, p.

and non-contracting states were represented at Berlin, Paris, and Warsaw.

At its twentieth session, the C.I.N.A., having examined the draft of the International Sanitary Convention for Air Navigation, which had been prepared with the collaboration of the Secretary-General of the C.I.N.A., assisted by the Rapporteur of the Medical Sub-Commission of the C.I.N.A., and by the International Office of Public Hygiene, decided to approve the draft Convention and expressed the desire that it should be signed and ratified as soon as possible by governments. This decision of the C.I.N.A. followed a report by its special committee constituted to study the question, a report by its Legal Sub-Commission, and observations formulated by certain contracting states.¹⁵

The intimate and unusual nature of the collaboration between the C.I.N.A. and the International Office of Public Hygiene is illustrated in Articles 7, 8, 40, 58, and 60 of the Sanitary Convention, which actually attribute to the C.I.N.A. certain specific functions.¹⁶

For example:

Article 7—Each High Contracting Party shall communicate, either to the Office International d'Hygiène Publique or to the International Commission for Air Navigation (which will transmit to each other the information received) a list of his sanitary aerodromes, in order that it may be brought to the knowledge of the other High Contracting Parties. . . .

Article 60— . . . This tariff [for sanitary operations in aerodromes] shall be as moderate as possible and shall be

¹⁵ *Official Bulletin* No. 20, C.I.N.A., 1932, pp. 63-64.

¹⁶ The text of the International Sanitary Convention for Air Navigation is reproduced in *Revue Aéronautique Internationale* No. 4, Paris, June, 1932, pp. 249-255. It will be noticed in Chapter VII that among the states which are parties to this Convention is the United States of America, which still lies outside the C.I.N.A.

notified either to the Office International d'Hygiène Publique or to the International Commission for Air Navigation under the conditions laid down in Article 7.

The C.I.N.A., at its twenty-first session, held in 1933, adopted a new text of Annex H (customs) to the Convention.¹⁷ This new text, to become effective, would have had to be inserted in a protocol of amendment of Annex H, to be signed and ratified by all the contracting states. At its twenty-second session, held in 1934, the C.I.N.A., noting the detailed observations regarding the new text of Annex H made by the International Air Traffic Association (I.A.T.A.) at the latter's thirty-first session, held in March, 1934, decided to postpone the preparation of the protocol of amendment of Annex H and to charge its special Customs Committee to pursue the study of the question of revising this Annex, including the observations made by the I.A.T.A.¹⁸ The wishes of the air transport companies, members of the I.A.T.A., were closely taken into consideration in the amended

¹⁷ The C.I.N.A., on the question of customs exemption for liquid fuel and lubricants, adopted the following resolution in 1933: "The Commission recommends the contracting States to consider the possibility of proceeding by means of special agreements to the adoption of the following provisions:

"On arrival, the fuel and lubricants which are contained in the ordinary tanks of the aircraft shall not be liable to Customs or other duties. No quantity, however, may be disembarked free of Customs duties.

"On departure, the fuel and lubricants intended for the refuelling of aircraft proceeding to another contracting State are exempt from Customs or other duties. Nevertheless, in the case of a stop in its own territory, the State in which the aircraft has obtained its supply may make the granting of the exemption subject to certain specified conditions." *Official Bulletin* No. 21, p. 68. The new text of Annex H only provides for the above customs exemption upon the arrival of aircraft.

See *infra*, Chapter VIII, for action taken by the League's Transit Organisation on this question.

¹⁸ *Review of the Twenty-second Session, C.I.N.A.*, Lisbon, 1934, p. 104.

“new text” of Annex H, adopted by the C.I.N.A., and for which a protocol of amendment was established on June 1, 1935.

The C.I.N.A. has relations with the International Federation of National Standardising Associations (Comité I.S.A.-20-Aéronautique), concerning operational and materials standards, and has taken into consideration the recommendations of the International Commission on Illumination.

In 1930, the C.I.N.A. entered into relations with the Pan-American Union, and in 1932, with the International Labour Organisation.

V

BILATERAL AGREEMENTS ON AIR NAVIGATION

THE bilateral agreements under consideration here, which have been concluded by European states, may be divided into two main groups: 1. agreements of a general character; 2. agreements for the establishment and operation of air lines.

I. AGREEMENTS OF A GENERAL CHARACTER

When it appeared that certain European states were likely, for the time being, to remain outside the Paris Convention, it was realized that bilateral agreements for the regulation of international air navigation would have to be entered into between states not signatories to the Convention, or between signatories and non-signatories. The confusion which might have resulted from this multiplicity of texts has been lessened to a notable extent by the fact that most of the bilateral agreements have been based on the Paris Convention. The bilateral agreements therefore contain, albeit on a reduced scale, much the same mixture of strength and weakness, from the point of view of international organization, as the multilateral instrument.

The first agreements to be concluded were those between Great Britain and Switzerland (November 6, 1919), and between France and Switzerland (December 9, 1919), followed by a number of others, some of which have lapsed because both the states in question have become parties to the Paris Convention.

No official document claims to list all the bilateral

agreements entered into, or even all those at present in force. Those believed to be in force, the existence of which it has been possible to ascertain, have been included in the lists reproduced below. The bilateral agreements understood to have lapsed are not included.¹

TABLE OF GENERAL BILATERAL AGREEMENTS RELATING
TO AIR NAVIGATION

| | |
|--|--------------------|
| Germany-Switzerland | September 14, 1920 |
| Denmark-Germany | April 25, 1922 |
| Germany-Netherlands | July 24, 1922 |
| Austria-Hungary | August 29, 1924 |
| Austria-Germany | May 19, 1925 |
| Germany-Sweden | May 29, 1925 |
| France-Germany | May 22, 1926 |
| Belgium-Germany | May 29, 1926 |
| Czechoslovakia-Germany | January 22, 1927 |
| Austria-Czechoslovakia | February 15, 1927 |
| Germany-Italy | May 20, 1927 |
| Germany-Great Britain | June 29, 1927 |
| Germany-Spain | December 9, 1927 |
| Austria-Italy | May 11, 1928 |
| Germany-Norway | January 23, 1929 |
| Germany-Poland | August 28, 1929 |
| Austria-Netherlands | December 31, 1929 |
| Austria-Yugoslavia | December 31, 1929 |
| Austria-Poland | April 10, 1930 |
| Italy-United States of America ² | October 14, 1931 |

¹ Although this chapter deals only with agreements entered into between European states, there are included in the lists those concluded by a European state with an extra-European state.

² In addition to the general agreements on air navigation already concluded by the United States with certain European states, the former has also made the following technical arrangements: acceptance of both certificates of airworthiness for imported aircraft and

| | |
|---|-------------------|
| Hungary-Poland | November 28, 1931 |
| Germany-United States of America.. | May 27, 1932 |
| Hungary-Italy | July 5, 1932 |
| Austria-Great Britain | July 16, 1932 |
| Netherlands-United States of America | November 16, 1932 |
| Germany-Hungary | January 13, 1933 |
| Sweden-United States of America... | October 9, 1933 |
| Norway-United States of America.. | October 16, 1933 |
| Denmark-United States of America.. | March 24, 1934 |
| Austria-Switzerland | November 14, 1934 |
| Great Britain-United States of America | April 5, 1935 |
| Egypt-Italy | May, 1935 |
| Czechoslovakia-U.S.S.R. | May 16, 1935 |
| Estonia-Sweden | May 20, 1935 |
| Hungary-Netherlands | June 8, 1935 |

FREEDOM OF PASSAGE, CROSSING OF FRONTIERS, AND PROHIBITED ZONES

Each state grants to the aircraft of the other contracting state freedom of innocent passage⁸ in time of peace, with the reservation that the frontiers may be crossed

issuance of licenses to pilots of civil aircraft, Denmark (1934), Norway (1933), Sweden (1933), Great Britain (1935); acceptance of airworthiness certificates only, Belgium (1932), Germany (1932). The general bilateral agreements concluded between the United States and European countries are modelled after the Paris Convention, like virtually all other bilateral air agreements.

⁸ The last paragraph of Article 6 of the Lateran Treaty, concluded between the Holy See (becoming the State of the City of the Vatican) and Italy on February 11, 1929, stipulates that "... agreements will be made between the Holy See and the Italian Government for the circulation in the latter's territory of the vehicles and aircraft of the Vatican City." The second paragraph of Article 7 states that "in conformity with the regulations of international law, aircraft of any kind are prohibited from flying over the territory of the Vatican." The unusual nature of the juridical relations thus

only at certain points. Exceptions to this are the agreements between Denmark-Germany (1922), Germany-the Netherlands (1922), and Germany-Sweden (1925), which lay down that, unless otherwise provided, the frontiers between the two states may be crossed at any point.

All the agreements provide that the contracting parties have the right to prohibit air navigation over certain areas of their territory. Most of the agreements entered into since 1925 contain an additional clause to the effect that the states "reserve the right in exceptional circumstances in time of peace to restrict or wholly or partially prohibit air navigation over their territory, such prohibition to take immediate effect."⁴ An aircraft finding itself over a prohibited area must give a distress signal and land at the earliest opportunity outside the zone.

LAWS, REGULATIONS, AND DOCUMENTS

Aircraft and crew must be provided with all documents which are required in the country of registration, such as licenses, and certificates of registration, airworthiness, and competency. In nearly all the agreements, each contracting state undertakes that such certificates and licenses issued by the other state shall have the same validity as its own. As a rule each state reserves the right, for the purposes of flight within its own territory, to refuse to recognize certificates of competency

established consists in the adoption of a principle excluding reciprocity of treatment for aircraft of the two contracting parties. Article 21 of the agreement between Estonia and Sweden (1935) stipulates that "no provision of the present Convention will give Sweden the right to enjoy any privileges, exceptions or favours that Estonia may accord to the aircraft of Latvia and Lithuania."

⁴ See Article 3 of the Paris Convention, *supra*, Chapter III. It would appear that the new text of Article 3, effective in 1933, was partly inspired by the clause found in bilateral agreements.

and licenses issued to its nationals by the other contracting state.

In all matters, aircraft, crew, and passengers are subject to the laws and regulations in force in the country flown over.

ASSISTANCE TO FOREIGN AIRCRAFT

At aerodromes, foreign aircraft are entitled to meteorological, safety, and wireless services on the same conditions as national aircraft, and, in cases of forced landing, they are entitled to the same measures of assistance. Several conventions do not have such provisions.

PROHIBITED TRANSPORT

The bilateral agreements are, as a rule, more definite than the Paris Convention in their stipulations regarding articles which may not be carried during flight. The formula varies, but in general, the carriage of arms, munitions, poisonous or asphyxiating gases, and carrier pigeons is prohibited. In some agreements, the carriage of photographic or cinematographic apparatus is prohibited; in others, it may be carried only with a permit, or so that it may not be used during flight. The agreements concluded by Switzerland with Great Britain (1919), France (1919), Germany (1920), and Belgium (1922),⁵ did not contain such prohibition.

WIRELESS APPARATUS

Restrictions are placed on the carriage and use of wireless apparatus, which must conform to the regulations in force in the country flown over, and which, in nearly all cases, may be used only by a member of the crew in possession of a special license issued for that purpose by

⁵ These particular agreements, with the exception of that with Germany, lapsed when Switzerland adhered to the Paris Convention in 1934.

the competent authority of the country of origin. In some cases, the apparatus must be licensed by both states, or may be carried only in so far as this is permitted by both states; for example: Denmark-Germany (1922), Austria-Czechoslovakia (1927), Austria-Yugoslavia (1929), and Hungary-Italy (1932). In other cases, the apparatus must possess a special license issued by its country of origin; for example: Germany-the Netherlands (1922), Czechoslovakia-Germany (1927), Hungary-Poland (1931), and Austria-Great Britain (1932). A third category states that the carriage of wireless apparatus is to be the subject of a special arrangement between the contracting states; for example: Germany-Switzerland (1920), and Germany-Sweden (1925).

TRAFFIC

Traffic between two points in a country (cabotage) may be reserved to national aircraft. International traffic may be carried by the aircraft of both states. Some agreements—for example, those of Germany-Italy (1927), Austria-Italy (1928), Hungary-Poland (1931), and Hungary-Italy (1932)—introduce the most-favored-nation clause as applicable to commercial relations by air between the two countries in question.

MAIL

The carriage of mail is in all cases subject to special agreement between the competent national administrations.

ARRIVAL AND DEPARTURE OF AIRCRAFT

Public customs aerodromes must be used as the first landing place and as the point of departure by aircraft crossing a frontier. In the event of a forced landing, the aircraft may not leave until authorized by police or

customs authorities to proceed to a customs aerodrome.

Most of the conventions provide for the examination of aircraft and their documents at the time of departure and on arrival.

ESTABLISHMENT AND OPERATION OF AIR LINES

Save for some of the very earliest, the agreements, as a rule, impose special conditions for the establishment and operation of regular air lines. There is thus a close affinity to the Paris Convention. For example, Article 1 of the Convention between Germany and Italy (1927) reads:

. . . It is . . . understood that the creation and operation, by an air navigation enterprise belonging to one of the High Contracting Parties, of regular air services within the territory of the other Contracting Party, or merely over the said territory (with or without intermediate landing) shall be subject to a special agreement between the highest air authorities of the respective States.

Similar provisions are found in the following: Germany-Great Britain (1927), Germany-Norway (1929), and Hungary-Italy (1932).

Others, for example, Germany-France (1926), Belgium-Germany (1926), Czechoslovakia-Germany (1927), Austria-Czechoslovakia (1927), Germany-Spain (1927), Austria-Italy (1928), Hungary-Poland (1931), and Austria-Great Britain (1932), state that the necessary arrangements for the operation of air lines shall be made by arrangement between the states.

Still other agreements provide that the operation of air lines shall be the subject of agreement between the state and the foreign enterprise; for example, Austria-Hungary (1924) and Austria-Germany (1925).

A fourth category states, without making any special

conditions, that the air lines shall be the subject of special regulations or authorization; for example, Denmark-Germany (1922), Germany-the Netherlands (1922), Germany-Sweden (1925), and Austria-the Netherlands (1930).⁶

CIVIL LIABILITY AND INSURANCE

In the absence, at the time of the conclusion of the agreements under review, of any international instrument for the regulation of third-party insurance,⁷ several agreements provide for coverage for such damage. A clause to this effect is included in the Conventions between Czechoslovakia and Germany (1927), Austria and Czechoslovakia (1927), and Germany and Norway (1929):

Aircraft must also be provided with a certificate showing that an insurance has been contracted, or that security has been deposited to guarantee damages which may be incurred in the operation of the aircraft in the territory of the State to which it does not belong.

The Annex to the Convention between Denmark and Germany (1922) states:

In case insurance to cover liability is prescribed in one of the contracting States, such insurance may be effected in one of the recognised insurance companies of the other contracting State covering insurance outside such State, provided that the payment of any indemnities due for damage caused can be made through a representative of such insurance company in the first-mentioned State. Each of the contracting States reserves the right to make special arrangements providing otherwise for the cover of indemnities for damages.

⁶ See second section of this chapter for special agreements relating to the establishment and operation of regular air lines.

⁷ See *infra*, Chapter VI, for the Rome Convention entitled "Convention for the Unification of Certain Rules relating to Damage Caused by Aircraft to Third Parties on the Ground" (1933).

The agreement between Germany and Sweden (1925) expressly includes insurance of liability among the national laws and regulations to which foreign aircraft are subject.

Finally, the agreement between Austria and Poland (1930) provides:

The contracting States reserve the right by direct agreement between the competent authorities of both States to settle any claims for damage caused in connection with the operation of aircraft in the territory of the other contracting State.

It is possible, of course, that in a number of cases, third-party insurance is stipulated in the national laws and regulations applicable to aviation, without being mentioned specifically in the actual bilateral agreements.

SETTLEMENT OF DISPUTES

Provisions vary for the settlement of disputes which arise from the agreements. Some make no provision for settlement other than through the usual diplomatic channels;⁸ in this case, it may be assumed that the procedure specified in arbitration treaties between the two countries would be followed. In the absence of an arbitration treaty, if the two states are parties to the General Act for the Pacific Settlement of International Disputes (adopted by the League of Nations Assembly, September 26, 1928, in force from August 16, 1929), the dispute would be settled according to its provisions, which envisage conciliation, judicial settlement, and arbitration. The General Act combined three model conventions.

Certain agreements provide for the settlement of dis-

⁸ Germany-Switzerland (1920), Denmark-Germany (1922), Germany-the Netherlands (1922), Austria-Hungary (1924), Austria-Germany (1925), Germany-Sweden (1925), and Austria-the Netherlands (1929).

putes in accordance with mutual treaties of conciliation and arbitration as follows:

France-Germany (1926): Franco-German arbitration Convention of October 16, 1925

Belgium-Germany (1926): Germano-Belgian arbitration Convention of October 16, 1925

Czechoslovakia-Germany (1927): Germano-Czechoslovak arbitration Treaty of October 16, 1925

Austria-Czechoslovakia (1927): Austro-Czechoslovak Treaty of conciliation and arbitration of March 5, 1926

Germany-Italy (1927): Germano-Italian Treaty of conciliation and arbitration of December 29, 1926

Hungary-Italy (1932): Italo-Hungarian Treaty of conciliation and arbitration of April 5, 1927

The following agreements provide for appeal direct to the Permanent Court of International Justice, unless the two contracting parties agree otherwise: Germany-Great Britain (1927), Germany-Spain (1927), and Austria-Great Britain (1932).

The Convention between Austria and Italy (1928) provides for settlement by a conciliation commission consisting of one member nominated by each contracting state and a chairman appointed by common consent. Should the contracting states fail to agree upon the choice of the chairman, or to accept the solution proposed by the Commission, the dispute is referred to the Permanent Court of International Justice.

Three Conventions, namely, Germany-Poland (1929), Austria-Poland (1930), and Hungary-Poland (1931), provide for an arbitration tribunal composed of three members. If the dispute cannot be settled through diplomatic channels, each contracting state must appoint an

arbitrator within one month after arbitration has been requested by one of the contracting states, the chairman of the arbitration tribunal to be appointed by mutual agreement between the contracting states within a further period of one month. If one contracting state fails to appoint its arbitrator within one month, or, if within the further period of one month the chairman has not been agreed upon, the President of the Swiss Confederation would be asked to make such appointment.

In the case of the Convention between Austria and Switzerland (1934), the procedure outlined in the preceding paragraph also applies, except that the President of the Swiss Confederation is replaced by the Chairman of the League's Advisory and Technical Committee for Communications and Transit.

DURATION AND DENUNCIATION

The bilateral conventions usually do not lay down a definite period of validity; they contain comparatively short periods of notice of denunciation. The following Conventions may be denounced by either party on three months' notice: Germany-Switzerland (1920), Denmark-Germany (1922), Germany-the Netherlands (1922), Austria-Hungary (1924), Austria-Germany (1925), and Germany-Sweden (1925). The following may be denounced by either party on twelve months' notice: France-Germany (1926), Belgium-Germany (1926), Germany-Italy (1927), Germany-Great Britain (1927), Germany-Spain (1927), Austria-Italy (1928), Germany-Norway (1929), Austria-Poland (1930), Hungary-Poland (1931), Hungary-Italy (1932), and Austria-Great Britain (1932). In the following, denunciation takes effect from the end of the following calendar

year: Czechoslovakia-Germany (1927), Austria-Czechoslovakia (1927), and Austria-the Netherlands (1929). No provision for denunciation was made in the Convention between Germany and the Saar (1929).

In addition to the above, some agreements contain an extra provision as follows: that between Denmark and Germany (1922) states that Denmark will have the right to denounce the Convention with immediate effect on adhering to the Paris Convention; Sweden is granted a similar privilege in its Convention with Germany (1925). The Conventions between Germany and Norway (1929) and Austria and the Netherlands (1929) state that each party will have the right to denounce the agreement with immediate effect as soon as both contracting states have ratified the Paris Convention. The agreement concluded between Austria and Switzerland (1934) is for an indefinite period, but may be denounced at any time. It ceases to operate three months after its denunciation by one of these states.

2. AGREEMENTS FOR THE ESTABLISHMENT AND OPERATION OF AIR LINES

Concessions applying to international air lines differ. Some are the subject of bilateral agreements between the governments of the states concerned; in other cases, international lines are established by agreement between the state and the foreign air transport company concerned, or between the competent administrations of the two states; again, there are still other arrangements, usually known as "pools," made between two or more such national companies.⁹ The type of special agreements

⁹ The section on pools in Chapter II, that on Article 15 of the Paris Convention in Chapter III, and that on the League's Air Transport Co-operation Committee in Chapter VIII, should be referred to in this connection.

under consideration does not necessarily result in pools.

The following is a list of bilateral agreements for the establishment of air lines which are known to exist:

TABLE OF BILATERAL AGREEMENTS RELATING TO THE
ESTABLISHMENT AND OPERATION OF AIR LINES

| | |
|-----------------------------|--|
| Austria-Poland..... | May 5, 1925 |
| Czechoslovakia-France..... | May 26, 1925, and June 25, 1930 |
| Czechoslovakia-Poland..... | April 15, 1926 |
| Austria-Czechoslovakia..... | February 15, 1927 |
| Iran-U.S.S.R..... | November 23, 1927 |
| Afghanistan-U.S.S.R..... | November 28, 1927 |
| Germany-Spain..... | December 9, 1927, Febru- ary 10, 1931, and Janu- ary 7, 1935 |
| France-Spain..... | March 22, 1928 |
| Austria-Italy..... | May 11, 1928 |
| Italy-Spain..... | October 3, 1928 |
| Austria-Yugoslavia..... | March 1, 1930 |
| Bulgaria-Poland..... | April 7, 1930 |
| Poland-Roumania..... | May 9, 1930 |
| Belgium-France..... | May 23, 1930 |
| Czechoslovakia-Roumania.... | June 20, 1930 |
| France-Poland..... | August 2, 1930 |
| Great Britain-Greece..... | April 7, 1931 |
| Greece-Poland..... | April 22, 1931 |
| Czechoslovakia-Germany.... | April 29, 1931 |
| France-Greece..... | June 5, 1931 |
| Belgium-Spain..... | February 27, 1932 |
| Czechoslovakia-Italy..... | April 28, 1932 |
| Austria-Great Britain..... | December 14, 1932 |
| Greece-Roumania..... | June 12, 1933 |
| Greece-Yugoslavia | July 22, 1933 |

| | |
|---|--|
| Germany-Poland..... | January 21, 1934 (two agreements of the same date) |
| Great Britain-India-Italy ¹⁰ ... | December 7, 1934 |
| Albania-Italy..... | February 20, 1935 |
| Czechoslovakia-Netherlands .. | March 30, 1935 |
| France-Italy | May 13, 1935 |
| Italy-Netherlands | May 20, 1935 |

ESTABLISHMENT OF AIR LINES

All the agreements detail the commercial air lines to be operated by an undertaking to be nominated by each state. What has come to be regarded as the privilege of flight over the territory of the other state is given to the company in question under certain conditions and usually in return for a similar concession to the company of the other state. The agreements may be classed in three categories: (1) A prescribed line between the two states to be operated by each commercial transport undertaking on a strictly reciprocal basis. *Example:* Article 1 of the agreement between Poland and Roumania (1930) reads:

The Government of the Polish Republic shall grant the authorisations necessary for the operation over Polish territory of the airway Warsaw-Bucharest and *vice versa* to a Roumanian air navigation undertaking designated by the Roumanian Government.

The Government of the Kingdom of Roumania shall grant the authorisations necessary for the operation over Roumanian territory of the same airway Bucharest-Warsaw and *vice versa* to a Polish air navigation undertaking designated by the Polish Government.

The airway shall be operated by the two undertakings on a basis of complete reciprocity.

¹⁰ This is not strictly a bilateral agreement, although India is mentioned only in the title and preamble.

The minimum obligations usually consist of agreements with regard to tariffs, the fixing of routes, and the organization of traffic. (2) Permission may be given by each state to the undertaking nominated by the other state to fly to and over its territory in the operation of a service which extends beyond its frontiers. *Example:* Articles 1 and 2 of the arrangement between Czechoslovakia and Germany (1931):

Article 1—The Czechoslovak Republic will issue to a German air navigation company to be designated by the German Reich, the necessary authorisations with a view to the operation of the following air transport lines:

- a) Berlin-Dresden-Prague-Vienna;
- b) Breslau-Prague-Munich;
- c) Chemnitz-Marienbad (Mariánské Lázně);
- d) Chemnitz-Prague.

Article 2—The German Reich will issue to a Czechoslovak air navigation company to be designated by the Czechoslovak Republic, the necessary authorisations with a view to the operation of the following air transport lines:

- a) Prague-Dresden-Berlin-Hamburg;
- b) Prague-Munich-Zurich;
- c) Prague-Halle/Leipzig-Essen/Mulheim-Rotterdam;
- d) Marienbad (Mariánské Lázně)-Halle/Leipzig

(3) Permission may be given by state A to an undertaking nominated by state B to fly to and over its territory in the operation of a service which extends beyond its frontiers, while, in return, the undertaking nominated by state A is authorized to operate a service, or services, to the territory of state B. *Example:* Articles 3 and 4 of the Convention between Great Britain and Greece (1931):

Article 3—

I. The British Air Transport Companies operating the air services between the United Kingdom and Africa and Asia

shall have the right to fly over Greek territory in accordance with the provisions of the present Convention.

II. The British air services in crossing Greek territory may follow any or all the following routes, that is to say, the route Yugoslavia-Salonika-Athens and beyond, the route Italy-Athens and beyond, and the route Malta-Athens and beyond.

III. For the purpose of operating the British Air Services, the British Air Transport Companies shall be entitled to use the landing places at Salonika, Athens, Corfu, Mirabella, Candia, Suda Bay and Navarino, and for the Malta-Athens route, Ithaca and Patras. . . .

Article 4—The Greek Air Transport Companies shall have the right to establish and to operate regular seaplane services to Malta and Cyprus and for that purpose to make use of the landing places at Kala Mistra and the eastern side of Marsascirocco Bay at Malta, and a commercially practicable seaplane station in Cyprus to be agreed upon between the competent aviation authorities of the High Contracting Parties.

All the agreements under discussion fall into one of the above categories, and some contain varying provisions, falling into two, or even all three, of these categories. An exception is the Convention entered into between Albania and Italy (1935), whereby the former state concedes to an Italian company, Ala Littoria, the monopoly of all air services in Albania for ten years.

Furthermore, the Conventions between Spain and Italy, and France and Spain, both concluded in 1928, state that if, after the inauguration of the services, the two companies consider their fusion to be expedient on the basis of complete equality, the two governments may give the necessary authorization. In the Franco-Spanish agreement, the possibility of forming a joint company refers only to the projected Madrid-Bordeaux-Paris line. The agreement between Germany and Spain (1927) also

provides for the formation of an eventual German-Spanish company. An airship agreement between these two countries (1935) contains a clause to the effect that airship services between Friedrichshafen-Barcelona-Seville-South America, when ultimately established, may be operated by a joint German-Spanish concern, sharing equally in capital, staffs, airships, ground organization, and subsidies. It appears that Spain reserves the right to take a half share, not only in the German-South American airship service already operated by the Zeppelin concern, but in any eastward services, for instance, to China and Japan, which may eventually be opened by Germany.¹¹ It is possible that such provisions contain the seeds of an ultimate "internationalization" of European air lines.

OPERATION OF SERVICES

The frequency of the service, time-tables, connections with other lines, and the type of machine to be used must be announced to the other contracting state four weeks, in the majority of cases, before the service is put into operation.

LANDING PLACES AND FACILITIES AT AIRPORTS

All the conventions name fixed landing places to be used in the operation of the air service. The contracting parties authorize the companies to use airport facilities, technical installations, etc., at the specified landing places and, in general, promise equality of treatment with national aircraft in case of forced landing. In addition, in a number of conventions—for example, Bulgaria-Poland (1930), Poland-Roumania (1930), Great Britain-Greece (1931), Greece-Poland (1931), and France-Greece (1931)—the states grant to the undertaking of the other state all available facilities, on the same conditions as to

¹¹ C.I.N.A. *Bulletin of Information* No. 705 (January 2, 1936).

national undertakings, for the erection or extension of necessary installations at airports, while in a few cases the state grants such facilities under conditions not inferior to those applicable to the most favored foreign company.

LAWS AND REGULATIONS

The air transport undertakings are obliged to observe the laws and regulations in force in the other state. In some cases, when both parties are members of the C.I.N.A., the provisions of the Paris Convention must be observed, and, in other cases, the terms of the general air navigation bilateral agreement between the two states.

EMPLOYMENT OF NATIONALS

In a few cases—Czechoslovakia-Poland (1926), Bulgaria-Poland (1930), Poland-Roumania (1930), Great Britain-Greece (1931), and Greece-Poland (1931)—only nationals of the two contracting states may be employed in connection with the air services.

CUSTOMS EXEMPTION

The aeroplanes, engines, spare parts, and accessories are in some cases admitted provisionally free of customs duty, subject to certain conditions: Czechoslovakia-Poland (1926), Bulgaria-Poland (1930), Poland-Roumania (1930), France-Poland (1930), Great Britain-Greece (1931), Greece-Poland (1931), and France-Greece (1931). Provision for a special customs régime is made in the agreement between France and Poland (1930).

TRAFFIC

As regards traffic, some countries—Austria-Czechoslovakia (1927), Poland-Roumania (1930), and Czechoslovakia-Germany (1931)—undertake, on certain specified lines, to waive the cabotage clause in the Paris

Convention or in general bilateral agreements. Others—France-Spain (1928), Great Britain-Greece (1931), France-Greece (1931), and Germany-Poland (1934)—permit aircraft of the other contracting state to embark and disembark mail, passengers, and goods at specified landing places along the route, under certain conditions.

MAIL

The carriage of mail is in all cases subject to an agreement between the postal administrations of the contracting parties. The Convention between France and Greece (1931) states that the parties retain the right to reserve domestic and foreign mail to their national companies. Special conditions for the carriage of mail to Africa are contained in the agreement between Belgium and France (1930).

SUBSIDIES

Subsidies are mentioned only in a few of the agreements. For instance, the agreement between Germany and Spain (1927) states that each company will receive the subsidy which its government decides to offer it;¹² that between France and Spain (1928) states that, apart from payment of mail contracts, the contracting parties do not contemplate subsidizing the undertaking of the other party. The agreement between Belgium and France (1930) states that each of the High Contracting Parties undertakes, within the limits of the credits granted, to ensure to the company charged with the operation of the line, the financial aid necessary for the regular working of the line. Under the agreement between Italy and Spain (1928), each state reserves the right to determine the amount of subsidy to be granted in respect of the operation of the air line.

¹² Reference was made *supra*, p. 116, to some of the reported unusual provisions of the German-Spanish airship agreement (1935).

SETTLEMENT OF DISPUTES

Some Conventions—France-Spain (1928) and Belgium-Spain (1932)—provide for settlement of disputes in accordance with the general air navigation bilateral agreements between the two countries. Others provide for an arbitration commission: Italy-Spain (1928), Bulgaria-Poland (1930), Poland-Roumania (1930), Belgium-France (1930), Greece-Poland (1931), and France-Greece (1931); and others for appeal to the Permanent Court of International Justice, such as France-Poland (1930) and Great Britain-Greece (1931). In the case of Belgium and France (1930) and France and Greece (1931), appeal to the Permanent Court would be made only if the parties failed to agree upon the choice of an arbitrator. The agreement between France and Poland (1930) provides, as an alternative, for appeal to an arbitral tribunal, as laid down by the Hague Convention of 1907.

DURATION AND DENUNCIATION

Provisions for the duration of the agreements, and the time-limits for the operation of the air services specified therein, differ from one year—Czechoslovakia-Italy (1932)—to ten years—France-Belgium (1930), Great Britain-India-Italy (1934), but the most general time-limit is two or five years. All are renewable for further periods. Time-limits of denunciation differ correspondingly, but, in the majority of cases, denunciation is to take effect on one or two years' notice, or immediately, if one party should denounce the Paris Convention or the general air navigation bilateral agreement between the two states. The Italian government reserves the right to denounce the Anglo-Indian-Italian agreement at any moment if the existence of the British air services results

in the denunciation of, or in a failure to renew, any air navigation Convention between Italy and any other European country, on the part either of Italy or that country.

INFLUENCE OF STATE POLICY

The connection between state policy, as such, and state air navigation policy, may be noticed in the diplomatic instruments concluded between Germany and Poland in the early months of 1934. The general Germano-Polish air navigation Convention (signed on August 28, 1929, but inoperative) was ratified on January 31, 1934, five days after the conclusion of the Germano-Polish Pact of Non-Aggression. Two additional agreements, one, on the joint operation of a Warsaw-Poznań-Berlin air line,¹⁸ the other, on flight over German and Polish territory by regular air transport lines, were concluded on January 21, and entered into force on May 18, 1934. Paragraph 2 of the first of the 1934 agreements runs, in part, as follows:

The air transport line designated in paragraph 1 shall be operated on a basis of equality and of absolute reciprocity, unless other arrangements are concluded with regard to the principles of operation.

The Warsaw-Poznań-Berlin line is operated as a pooling arrangement between Lufthansa and Lot, the Polish air transport company.

Perhaps an even more striking example of the correlation between politics and aviation may be observed in the conclusion of the Czechoslovak-Soviet Pact at Prague on May 16, 1935, and the signing of an air Convention between these two countries at Moscow on the same day. The air Convention includes a provision for

¹⁸ Previously, there had been no direct air service between Berlin and Warsaw.

the operation of a service between Moscow and Prague via Roumania, without flying over Polish territory. The most direct air route between the U.S.S.R. and Czechoslovakia is via Poland. Czechoslovakia and Roumania are both members of the Little Entente, while Poland is not. On May 31, 1935, the Polish air line between Warsaw and Vienna, which had been in operation for ten years, was discontinued after the Polish company had felt it inadvisable to comply with certain new operational requirements put forward by the Czechoslovak authorities. During and following this period political relations between Czechoslovakia and the Soviet Union were intimate; this was not the case in the relations between Czechoslovakia and Poland.

In May, 1935, when preparations for the invasion of Ethiopia were already under way, Italy secured permission from the Egyptian government to operate, via Egypt, a service between Rome and Italian North Africa to the Italian colonies in East Africa. Italy was already free, according to the terms of the Anglo-Indian-Italian Air Convention of December 7, 1934, to operate air services to the Sudan and British Somaliland.¹⁴

¹⁴ See *supra*, Chapter III.

VI

THE UNIFICATION OF PRIVATE AIR LAW

As early as 1922, the Advisory and Technical Committee for Communications and Transit of the League of Nations drew the attention of governments to the fact that no international action had been taken to unify private air law:

National legislation [on private air law] is proceeding, or is in contemplation, in the various States, without any organised attempt at co-ordination. Such an absence of co-ordination may well prove detrimental to the development of air navigation. Should no action be taken in the comparatively near future, divergent laws and usages will be established in different countries, and the difficulties so long apparent owing to the absence of uniformity in maritime law will recur and will perhaps prove more harmful in the case of air navigation owing to the extreme mobility of air transport. . . .

. . . This is undoubtedly a subject to be handled with the greatest care; for private law relating to air navigation is connected, to a certain extent, with the whole system of private and commercial law in each country. There will probably be differences in detail in the air legislation of the various States; but it appears desirable to consider whether an agreement, if only of a very elastic nature and in the form of recommendations or of a model code, might not be concluded on certain vital points of private law relating to air navigation.

Moreover, as we are dealing here with a branch of international law which is new for all States and which, for that reason, seems to be specially suited to legislation on uniform lines, the possibility of uniform legislation covering the whole, or a part, of the subject might also be considered.¹

¹ *Minutes of the Second Session*, Advisory and Technical Committee for Communications and Transit, Geneva, 1922, p. 44.

The basis of international public air law was actually established before the advent of air transport.² A certain experience of air transport, as such, was required before the unification of private air law, in itself a very different and a more complicated matter than the establishment of international public air law, could be undertaken.

On August 17, 1923, Raymond Poincaré, then Prime Minister, addressed the heads of French missions abroad, raising the question of the importance of the unification of private air law. Because, in his opinion, the C.I.N.A. was concerned with a Convention on public air law, he suggested the convocation of a special international conference to (1) draft a convention on the responsibility of the air carrier; (2) decide if it were desirable to pursue the study of the unification of private air law.³

The First International Conference on Private Air Law was convened by the French government on October 27, 1925, at Paris.⁴ Forty-three countries were represented at the Conference, which adopted a draft

² See *supra*, Chapter III.

³ See *Le Comité International Technique d'Experts Juridiques Aériens: son origine, son but, son oeuvre*, C.I.T.E.J.A., Paris, 1931, p. 5.

⁴ The Secretary-General of the C.I.N.A. acted as Secretary-General of the First International Conference on Private Air Law. In 1923, the C.I.N.A. had reminded the French government "that the question of the responsibility of aerial navigation, allied in practice to questions concerning the regulation of aerial navigation, the study of which devolves on the C.I.N.A. by virtue of the International Convention of October 13, 1919, and that it is fully qualified by means of its legal sub-commission to study this matter. It, therefore, expresses the wish that, with a view to maintaining a unity of views in the organisation of air navigation and of air traffic, paragraph 8 of Article 34 be interpreted in its broadest sense by the contracting States." O.B., C.I.N.A., No. 5, p. 29. Paragraph 8 of Article 34 reads thus: "To give its opinion on questions which the States may submit for examination." In 1923, only thirteen states were parties to the Paris Convention.

Convention relating to the liability of the air carrier. In addition, it adopted the following resolution, upon which was based the establishment of the Comité International Technique d'Experts Juridiques Aériens (C.I.T.E.J.A.), set up the following year (Translation):

After having drawn up, as an example, a list of questions the study of which should immediately follow the examination of the problem of the liability of the air carrier, the Conference, considering the importance, urgency, complexity, and the legal technicalities of these questions, expresses the wish that a special Committee of Experts should be charged to prepare the continuation of the work of the Conference.

This Committee would be composed of a limited number of members. Its regular headquarters would be at Paris.

The Conference, therefore, invites the French Government to enter into relations with the Governments invited to this Conference in order that this recommendation may take effect.

The Conference expresses the wish that the first questions to be studied by this Committee should be:

Damage caused by aircraft to property and persons on the ground;

Compulsory insurance;

Establishment of air registers; ownership of aircraft, vested rights and mortgages;

Seizure;

Renting of aircraft;

Air collisions;

Legal status of the commanding officer of an aircraft;

Bill of lading (air consignment note);

Uniform rules for the determination of the nationality of aircraft.

COMITÉ INTERNATIONAL TECHNIQUE D'EXPERTS
JURIDIQUES AÉRIENS (C.I.T.E.J.A.)

On January 23, 1926, Philippe Berthelot, Secretary-General of the Ministry of Foreign Affairs, communi-

cated to the French missions abroad a memorandum which read, in part, as follows (Translation):

. . . you are requested to ask the Government to which you are accredited to inform you as soon as possible whether it intends to participate in the establishment of the Special Committee of Experts envisaged. It does not seem possible to have the International Commission for Air Navigation examine questions pertaining to the field of private air law. This Commission is, in fact, charged only with perfecting by means of amendments the Convention on air navigation, of October 13th, 1919, and is not qualified to undertake the preparation of new texts foreign to the subject of that Convention, which defines the rights of States or administrations with regard to aircraft and their crews and the obligations of the latter. It is also important that each State preserve its complete sovereignty in all matters affecting possible changes in internal legislation; consequently, the proposed Committee of Experts is to be a purely advisory and completely independent organism both in its methods of work and in its operation.⁵

The Comité International Technique d'Experts Juridiques Aériens (C.I.T.E.J.A.) was established at Paris on May 17, 1926. At the outset, the following twenty-eight countries were represented thereon:⁶

| | |
|--------------------|--------------------------|
| Belgium | Great Britain and North- |
| Brazil | ern Ireland |
| China | Greece |
| Czechoslovakia | Guatemala |
| Denmark | Hungary |
| Dominican Republic | Italy |
| Ecuador | Japan |
| France | Liberia |
| Germany | Lithuania |

⁵ *Ibid.*, pp. 6-10.

⁶ By this time, seventeen countries were parties to the Paris Convention.

| | |
|-------------|--------------------------|
| Monaco | Sweden |
| Netherlands | Switzerland |
| Peru | United States of America |
| Poland | (observer) |
| Roumania | Uruguay |
| Spain | Yugoslavia |

In 1934, the C.I.T.E.J.A. included the following thirty-three states:

| | |
|---|---|
| Argentine Republic | Lithuania |
| Austria | Luxemburg |
| Belgium | Mexico |
| Brazil | Netherlands |
| China | Norway |
| Czechoslovakia | Peru |
| Denmark | Poland |
| Dominican Republic | Portugal |
| Egypt | Roumania |
| France | Spain |
| Great Britain and North- ern Ireland | Sweden |
| Germany | Switzerland |
| Greece | Turkey |
| Guatemala | United States of America |
| Hungary | (officially represented since February 14, 1931) |
| Italy | U.S.S.R. |
| Japan | Yugoslavia |

While the functions of the C.I.N.A. and the C.I.T.E.J.A. are by no means identical, and the powers and activities of the former are in the main, greater and more widespread than those of the latter, there are thirty states which are members of the C.I.N.A., as compared with thirty-three states represented on the

C.I.T.E.J.A.⁷ Among the countries represented on the C.I.T.E.J.A., but which are still outside the Paris Convention, one finds Austria, Brazil, China, Egypt, Germany, Hungary, Turkey, the United States of America,⁸ and the U.S.S.R. On the other hand, the British Dominions, Bulgaria, Chile, Finland, India, Iraq, Siam, and Uruguay are not represented on the C.I.T.E.J.A.

At the first session of the Committee, the experts were divided into two subcommittees, one on documentation and organization and the other on program and agenda. The first established the by-laws of the Committee; the second drew up a list of questions of private air law proposed for study by the C.I.T.E.J.A.

The study of certain problems of private air law was distributed as follows among four commissions set up at the first session:⁹

FIRST COMMISSION

Nationality of aircraft

Air register

Ownership, co-ownership, construction and transfer

Vested rights, mortgages, privileges and seizure

⁷ Too much stress should not be laid on the fact that 33 states are members of the C.I.T.E.J.A. For instance, only 15 states actually participated at its eighth and ninth sessions and 19 at its seventh session. Of 28 countries then parties to the Paris Convention, 23 participated at the twenty-second session of the C.I.N.A., 25 at the twenty-first, and 26 at the twentieth session.

⁸ The following organizations have designated representatives to serve on the Advisory Committee to the American Section of the C.I.T.E.J.A.: National Association of State Aviation Officials, National Conference of Commissioners on Uniform State Laws, American Bar Association, Independent Aviation Operators of the United States, National Aeronautic Association, Maritime Law Association of the United States, Aeronautical Chamber of Commerce of America, American Society of International Law, Board of Aviation Underwriters. Press Release, Department of State, Washington, January 9, 1935.

⁹ *Ibid.*, p. 18.

SECOND COMMISSION

Category of transport (commercial, touring, etc.)
Bill of lading
Liability of carrier toward consignors of goods and toward passengers
Jettison of cargo and general average
Renting of aircraft

THIRD COMMISSION

Damage and liability toward third parties (landing, collision and jettison)
Limits of liability (contractual limitation, abandonment)
Insurance

FOURTH COMMISSION

Legal status of commanding officer and crew
Accidents to the crew and insurance
Status of passengers
Law governing acts committed on board aircraft

The C.I.T.E.J.A. indicates to the competent commission the subject which it wishes to have studied, whereupon the commission instructs its rapporteur to prepare an analysis of the subject. The rapporteur then sends a questionnaire to the members of the commission, who are requested to reply within a stated period. With the assistance of these replies, the rapporteur draws up a note, as well as a preliminary draft text upon which the C.I.T.E.J.A. gives an opinion at one of its sessions. When a satisfactory result appears to have been reached, a preliminary draft of the proposed convention is submitted to the C.I.T.E.J.A., which may return it for further study. If the text is satisfactory to the C.I.T.E.J.A., it is forwarded to the French government for distribution to all the interested governments, with a view to conven-

drafts of the last two organizations were very similar, which is not extraordinary since the same persons prepared the drafts for these organizations, which habitually work closely together. The Polish government called at Warsaw in October, 1929, the Second International Conference on Private Air Law, which, on the basis of the final draft adopted by the C.I.T.E.J.A., established the Convention for the unification of certain rules relating to international carriage by air.

WARSAW CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR

The Second International Conference on Private Air Law, which opened at Warsaw on October 4, 1929, had, by October 12, concluded the Convention for the unification of certain rules relating to international carriage by air, usually known as "the Warsaw Convention."¹² The original preliminary draft adopted in 1925 had been considerably modified. The Convention was signed by the following twenty-three states:

| | |
|--------------------------|-----------------------|
| Australia | Japan |
| Austria | Latvia |
| Belgium | Luxemburg |
| Brazil | Netherlands |
| Czechoslovakia | Norway |
| Denmark | Poland |
| France | Roumania |
| Germany | Spain |
| Great Britain and North- | Switzerland |
| ern Ireland | Union of South Africa |
| Greece | U.S.S.R. |
| Italy | Yugoslavia |

¹² *League of Nations Treaty Series*, CXXXVII, 13-59.

It entered into force on February 13, 1933, for the following states: Brazil, France, Latvia, Poland, Roumania, Spain, and Yugoslavia, and has since been ratified also by Australia, Czechoslovakia, Germany, Great Britain and Northern Ireland, Italy, the Netherlands, Switzerland (and Liechtenstein), and the U.S.S.R., and has been adhered to by Danzig, India, the Irish Free State, Mexico, and the United States of America.¹³

The air transport companies which were members of the International Air Traffic Association (I.A.T.A.) had unanimously decided to apply the "general conditions for the transport of passengers and baggage and of goods," which are based on the Warsaw Convention, from the date of the entry of the latter into force, even in states which had not ratified the Convention.¹⁴ This important decision of the I.A.T.A. means that, for practical purposes, the Warsaw Convention is already in effect between the points in the various countries, both European and extra-European, served by air transport companies which are members of the I.A.T.A.¹⁵

For the present purpose, it will be sufficient to indicate some of the main lines of the Convention, instead of analyzing the Convention itself. The Convention applies to all international carriage of persons, baggage, or goods performed by aircraft for hire. It applies equally to gratuitous carriage by aircraft performed by an air trans-

¹³ The notification of United States adhesion was accompanied by the reserve, in conformity with the Additional Protocol, "that the first paragraph of Article 2 of the Convention shall not apply to international transportation that may be performed by the United States of America or any territory or possession under its jurisdiction." Article 2 (1) reads: "This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1."

¹⁴ *Information Bulletin*, I.A.T.A., No. 14, The Hague, 1930, p. 47.

¹⁵ See section on the I.A.T.A., *infra*, Chapter VII.

port undertaking (Art. 1), but not to carriage performed under terms of any international postal convention (Art. 2). Paragraph 2 of Article 1 defines "international carriage" as

any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.¹⁸

Paragraph 3 of Article 1 continues:

A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

¹⁸ For instance, carriage between Paris-Naples-Tunis is "international," but that between Paris-Tunis direct, being only "national," does not come within the scope of the Warsaw Convention. For a full discussion on this point, see D. Goedhuis, *La Convention de Varsovie du 12 octobre 1929*, The Hague, 1933, pp. 83-84.

It will be noticed in Chapter VII, *infra*, that the General Conditions adopted by the I.A.T.A., which are based on the Warsaw Convention, extend to both "national" and "international" carriage.

Chapter II determines the scope and use of passenger tickets (Art. 3), baggage tickets (Art. 4), and bills of lading (Arts. 5-16).¹⁷

Chapter III determines the liability of the carrier. He is liable for damage sustained in the death or injury of a passenger on board aircraft or during embarking or disembarking (Art. 17); for damage sustained to any registered baggage or goods during the carriage by air; and for damage caused by delay (Art. 19). He is not liable if he proves that he and his agents have taken all necessary and possible measures to avoid the damage; and, for the carriage of goods and baggage (but not of passengers), if he proves, in addition, that the damage was caused by negligent pilotage or negligence in the handling of the aircraft or in navigation (Art. 20). If the carrier proves that the damage was caused, or contributed to, by the negligence of the injured person, the court may exonerate the carrier wholly or partly (Art. 21).

The liability of the carrier is limited to the following amounts: 125,000 French francs per passenger (by special contract, the carrier and the passenger may agree to a higher limit of liability); 250 francs per kilogram of registered baggage and goods; 5,000 francs for baggage per passenger.

The carrier's liability is not excluded or limited if the damage is caused by his wilful misconduct, or by what is considered by the court to be the equivalent; this provision extends to any agent of the carrier (Art. 25).

The following provisions are made for settling claims for damages:

¹⁷ The provisions of the Warsaw Convention concerning transport documents correspond to a certain extent to those of the Berne Railway Conventions, on passengers and baggage, and on goods, of October 23, 1924. See Goedhuis, *op. cit.*, p. 102.

Article 28—

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

2. Questions of procedure shall be governed by the law of the Court seized of the case.

Article 29—

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

Article 30—

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss,

damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 31 lays down

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

The Rome Conference (1933) for the revision of the Berne Conventions was obliged to respect these provisions, since the Warsaw Convention had come into force on February 13, 1933. It, therefore, inserted in Article 2 of the Berne provisions relating to combined transport a new paragraph (4), worded as follows:

As regards international transport using both railways and transport services other than those defined in paragraph (1) above (namely, regular automobile or navigation services), the railways may draw up, in conjunction with the transport undertakings concerned, tariff provisions applying a legal régime different from that of the present Convention, in order to take account of the peculiarities of each mode of transport. In this case, they may provide for the use of a transport document other than that provided for in the present Convention.

It should be pointed out that

As a result of the new provision of the C.I.M., not only may the air transport undertakings obtain very great facilities in respect of the regulation of the question of responsibility, for which there might be some justification in view of the nature of this mode of carriage, but the rules regard-

ing responsibility may also be changed in respect of carriage by rail. The question arises whether this exemption in favour of the railways is justified.¹⁸

Article 32 provides that

any clause contained in the contract, and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

The Convention enters into force for a state on the ninetieth day after notification of ratification is communicated to the Polish government (Art. 37). Any state may adhere to the Convention, the adhesion taking effect ninety days after notification is made to the Polish government (Art. 38). Denunciation becomes effective six months after notification has been addressed to the same government (Art. 39).

The final Article of the Convention provides that

any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

The Conference adopted a final protocol providing for the consideration of other questions relating to car-

¹⁸ *Report of the Eighth Session, Permanent Committee for Transport by Rail*, Advisory and Technical Committee for Communications and Transit, League of Nations, 1935, p. 22.

riage by air which it would be desirable to regulate by international agreement. It also referred to the consideration of the C.I.T.E.J.A. certain questions concerning the uniform regulation of air carriage, the uniform wording of documents of carriage, etc.

The Third International Conference on Private Air Law opened at Rome on May 15, 1933, at the invitation of the Italian government. It examined two draft Conventions adopted by the C.I.T.E.J.A. at its seventh session held at Stockholm in July, 1932, and adopted them with certain modifications. The instruments concluded were the Convention relating to the precautionary attachment of aircraft; and the Convention for the unification of certain rules relating to damage caused by aircraft to third parties on the ground. Two new steps were thus taken in the unification of private air law.

ROME CONVENTION RELATING TO THE PRECAUTIONARY ATTACHMENT OF AIRCRAFT

The Convention relating to the precautionary attachment of aircraft provides for the exemption from seizure of aircraft on government service, aircraft on a regular line of public transport, and any other aircraft used for the carriage of passengers or property for hire, and fixes the regulations for aircraft whose attachment is not prohibited, or which are exempt from such attachment unknown to the operator, etc.

By precautionary attachment is meant "any act . . . whereby an aircraft is seized, in a private interest, through the medium of agents of justice or of the public administration for the benefit either of a creditor, or of the owner, or of the holder of a lien on the aircraft, where the attaching claimant cannot invoke a judgment and execution, obtained beforehand in the ordinary

course of procedure, or an equivalent right of execution" (Art. 2).¹⁹

ROME CONVENTION FOR THE UNIFICATION OF CERTAIN
RULES RELATING TO DAMAGE CAUSED BY AIRCRAFT
TO THIRD PARTIES ON THE GROUND

The Convention for the unification of certain rules relating to damage caused by aircraft to third parties on the ground, unlike the Warsaw Convention which is based on the theory of fault, applies the theory of risk. It lays down the system of objective liability²⁰ with a legal limitation on the amount of compensation, guaran-

¹⁹ See *The Journal of Air Law*, Chicago, October, 1933, pp. 564-567, for an English translation of this Convention, which was signed by the following countries: Austria, Belgium, Brazil, Czechoslovakia, Denmark, France, Germany, Great Britain and Northern Ireland, Guatemala, Hungary, India, Italy, Lithuania, Norway, Poland, Roumania, Salvador, San Marino, Spain, Switzerland, and the United States of America. List communicated by the C.I.T.E.J.A., February, 1934. Roumania and Spain ratified this Convention in 1934.

²⁰ It appears that the greater number of states which have already dealt with liability toward third persons in national air legislation have adopted the principle of absolute liability. See detailed discussion, André Kaftal, "The Problem of Liability for Damages Caused by Aircraft on the Surface," *The Journal of Air Law*, Chicago, 1934: "We see, then, aircraft of large air navigation companies flying every day over many countries each of which is regulated by a different law. The same accident, the same damage caused on the surface would have varying results according to the country where it occurred. One country might force the aircraft operator to pay an enormous amount of damages where another might exact only a modest sum, and a third might allow him complete exemption from liability. Moreover, the defense against any suit might be entirely different between countries. To provide for and if possible to cover risks, the air transport operator would require a number of legal advisers constantly studying the laws, decisions, decrees and ordinances of all countries to be flown over. This fact alone makes such flying impracticable for sportsmen and air tourists who cannot have sufficient legal assistance. All these difficulties are dealt with in aeronautical laws, but it is in the field of liability toward third persons that the aviator suffers most. For this reason, uniformity of laws concerning liability for damage caused on the surface is imperative." *Ibid.*, pp. 182-183.

teed by a security which the aircraft operator must furnish.

The Convention imposes liability for damages caused to persons or property on the ground by aircraft in flight (including the operations of departure and arrival), or by anything falling from such aircraft or, with certain exceptions, by any persons on board them. This liability is absolute in that it arises without any question of negligence, and can be reduced or set aside only when the damage has been caused or contributed to by the fault of the injured party (Arts. 2 and 3). This liability attaches to the operator of the aircraft, who is defined to be any person who has the right of disposal of, and uses the aircraft on his own account (Art. 4). A similar liability attaches to persons using aircraft without the operator's consent, and to operators who have not taken proper measures to prevent such use (Art. 5). Liability is limited on the basis of the maximum total weight of the aircraft at 250 French francs per kilogram, with minimum and maximum limits of 600,000 francs and 2,000,000 francs. One-third of this is appropriated to damage to property and the remaining two-thirds to damage to persons, with, in the latter case, a limit of 200,000 francs for injury to any one person (Art. 8). In cases of gross negligence, or of wilful misconduct on the part of the operator or his agents, or if there has been a failure to insure, or provide the necessary guarantees, liability becomes unlimited (Art. 14). Every aircraft registered in a contracting state must, for the purpose of flying over another contracting state, be insured against the liability in question up to the limit fixed by Article 8 (Art. 12 [1]). A deposit of securities or a bank guarantee may be substituted for insurance (Art. 12 [2]). Article 15 contains special provisions as to the amount of guarantees re-

quired in certain cases. The Convention only applies to ground damage caused in one contracting state by an aircraft registered in another contracting state; consequently, it does not apply to "national" flying (Art. 20); nor to military, customs or police aircraft (Art. 21), or to cases where compensation is governed by certain contracts of carriage or employment (Art. 22). Article 20 restricts somewhat the scope of the Convention.

The Convention has been signed by the following states: Austria, Belgium, Brazil, Czechoslovakia, Denmark, France, Germany, Great Britain and Northern Ireland, Guatemala, Honduras, India, Italy, Japan, Lithuania, the Netherlands, Norway, Poland, Roumania, Salvador, San Marino, Spain, Switzerland, Turkey, the State of the City of the Vatican, the United States of America, and Yugoslavia. Roumania and Spain ratified the Convention in 1934. It is important to notice that the Convention leaves to national laws the solution of certain problems, such as the influence which the fault of the injured person would have on the liability of the operator (Art. 3); of recourse against the person causing the injury (Art. 7); of the manner of calculating compensation, of the reasons for suspension and interruption of the period of limitation, etc. (Art. 17). It is unlikely that many states will ratify the Rome Convention before the problem of insurance has been settled.²¹

²¹ "The most deplorable deficiency is the lack of any international regulation of insurance made by the Convention. The result will be that the texts of policies vary between states and, whereas in one country many restrictive clauses are allowed in the policy, in another country there are only a few, and none in a third. . . . It is unsupportable that the chances of the injured person to secure compensation depend on the nationality of the aircraft which caused the injury. Thus the essential thing is not to exclude many more or less long, restrictive clauses from the insurance policies, but to achieve

Draft Conventions, on the ownership of aircraft and the air register, and on mortgages, other securities and air privileges, on air collisions and on assistance to, and salvage of, aircraft, are under consideration by the C.I.T.E.J.A.

The Final Act of the Third International Conference on Private Air Law contains the following recommendations (Translation):

A. The Conference expresses the wish that the contracting States should harmonise their national laws with the provisions in the Conventions adopted by the International Conferences on Private Air Law.

B. The Conference, appreciating the importance and utility of the preparatory work of the C.I.T.E.J.A.,

Expresses the wish that all the Governments represented at the Conference should adhere to the C.I.T.E.J.A., in the interest of the work of legal uniformity confided to this organisation.

C. The Conference, considering the benefit to all persons using aviation in being able to be well informed, if necessary, on the texts established by the International Conferences on Private Air Law;

Requests the C.I.T.E.J.A. to examine, in view of the Fourth Conference on Private Air Law, if, to what degree and manner, it could give its opinion on the interpretation of the texts of the international Conventions on private

uniformity in the insurance policies in all countries." Kaftal, *op. cit.*, pp. 402-403.

"The greatest danger in applying the texts of the Rome Convention is from lack of uniformity in the clauses of insurance policies which the aircraft operators are required to contract. To effectively guarantee injured persons, to allow operators to know insurance costs in advance and to aid insurers, it is necessary to create a uniform policy for all contracting states. It may be advantageous to go even farther, by concentrating within one single organisation the insurance of air risks throughout the entire world. It is up to private initiative to achieve this end." *Ibid.*, p. 405.

A step was taken in this direction in June, 1934, in the establishment of the International Union of Aviation Insurers. See *infra*, Chapter VII.

air law when it may be requested to do so by a public administration or an international organisation, without prejudice to the rights of the judicial body dealing with the dispute.

D. The Conference expresses the wish that the C.I.T.E.J.A., in the course of its studies on insurance in air navigation, should examine the question of insurance in connection with the liability of the operator to third persons, in order to reach uniform international regulations.

From the point of view of the position of the C.I.T.E.J.A., it is worthy of note that the draft resolution presented by the French delegation in connection with the C.I.T.E.J.A., and the interpretation of texts, went much further than recommendation "C" finally, made by the Rome Conference. The first French draft resolution contained the following proposal (Translation): "... considering that the C.I.T.E.J.A. constitutes its permanent expression—confides to the C.I.T.E.J.A. the duty of giving its opinion or its interpretation of the texts of international Conventions on private air law when it is requested by a representative of a public administration or of an international organisation, without prejudice to the right of interpretation of the judicial body dealing with the dispute." The fact that the French draft resolution met with considerable opposition on the part of certain delegations would indicate that there is, at any rate, no immediate and widespread desire to endow the C.I.T.E.J.A. with powers approaching those of the C.I.N.A.²²

²² This French draft resolution on the C.I.T.E.J.A. is a further indication that France consistently advocates increased international organization in the air. The delegations from Germany, the Netherlands, the United Kingdom, and the United States felt unable to support the draft resolution; the Polish delegation did not oppose it. *Minutes of the Session on May 24, 1933, Third International Conference on Private Air Law*, pp. 38-45.

VII

TOWARD INTERNATIONAL AIR ORGANIZATION IN OTHER SPHERES

THE activities of certain other bodies interested in bringing about, in different spheres, international air organization, will be discussed briefly in this chapter, under two sections. Those whose activities are confined solely to air questions will be discussed in the first section, and those whose interest in air questions is part of their general field of activity, in the second.

BODIES WHOSE ACTIVITIES ARE CONFINED TO AIR QUESTIONS

INTERNATIONAL AIR CONFERENCE (C.A.I.)

The International Air Conference owes its origin to the Anglo-French Air Conferences established in 1920, two years before the C.I.N.A.; it now includes government air officials of the following nine countries: Austria, Belgium, Czechoslovakia, Denmark, France, Germany, Great Britain and Northern Ireland, the Netherlands, and Switzerland.¹ The International Air Conference now meets once a year to study and resolve such problems as those connected with radiocommunications, meteorology, the organization of air routes, the standardization of aircraft parts, trial night flights, etc., problems sometimes too urgent to await the slower process of settlement by diplomatic agreement. The Conferences are not governmental because the experts are not charged

¹ Prior to its reincorporation in the Government of the Reich in 1935, officials of the Saar Territory participated in the International Air Conference.

with specific instructions or with powers to commit their governments. They are "official" because they are composed of officials of state administrations who are usually in a position to influence the putting into effect of the technical decisions of the Conferences. There is no permanent secretariat. If the meeting takes place in Berlin, German officials ensure the secretariat, and so on. The thirty-sixth Conference was held at Brussels in May, 1935. At each International Air Conference, the plenary session is preceded by meetings of the operational, wireless, and meteorological subcommissions. Also, a customs committee and a subcommission on lighting have been constituted. The decisions of the International Air Conference are expected to be applied by the states within two months after the receipt of the final minutes, unless a further delay has been asked by one or more states. The eminently practical and technical character of these conferences is shown by the fact that most of the original resolutions have been completed, revised, or suppressed and replaced by others. Regulations on wireless and meteorology were first adopted in 1930 and 1931 respectively by the International Air Conference. Some indication was given in Chapter IV of the relations between the C.I.N.A. and the C.A.I. The former has found distinctly useful the studies and experiments made by the International Air Conference in the important yet still somewhat restricted field of the latter.

MEDITERRANEAN AIR CONFERENCE (C.A.M.)

The procedure followed by the Mediterranean Air Conference (C.A.M.) is practically identical with that of the C.A.I.; their programs have much in common, although the fact that much of the flying in this area is above the sea naturally involves special constructional

and operational problems in air navigation. The C.A.M., which was established in 1930, is now composed of French, Greek, Italian, and Spanish officials.

In the C.A.I. and the C.A.M., personal relationships play an important part in the working out of these practical measures of coöperation which have become indispensable to the progress of European air transport.

BALTIC AND BALKAN STATES AIR CONFERENCE

One of the less generally appreciated results of the advent of European air transport has been the acceleration of direct communications between the Baltic and the Balkan States, which formerly had to rely exclusively on the long, roundabout sea route or the shorter but still tedious railway route. The Polish air transport company (generally known as Lot) links up Estonia, Latvia, Poland, Roumania, Bulgaria, and Greece.²

In September, 1934 and 1935, officials of the competent administrations of these six states met at Warsaw as the Baltic and Balkan States Air Conference. The Secretary-General of the C.I.N.A. was present. After adopting its administrative rules at its first session, the Conference examined certain technical problems of common interest. Among other matters, it adopted regulations for the wireless service of air navigation in the Baltic and the Balkan States.³

It would appear that the Baltic and Balkan States Air Conference is likely to have a good deal in common with the International Air Conference and the Mediterranean Air Conference.

² In the continued absence of diplomatic relations between Lithuania and Poland, Lot does not touch at Kaunas, capital of the former.

³ These regulations will be added to the Regulations for the International Radioelectric Service of Air Navigation, established by the C.I.N.A.

INTERNATIONAL AIR TRAFFIC ASSOCIATION (I.A.T.A.)

The International Air Traffic Association was formed in 1919, the first year of regular air transport, by a group of British, Dutch, German, and Scandinavian air transport companies. A central office was set up at The Hague in the following year. It has since been expanded to include the following companies:

Members

| | |
|---|---------------------|
| Société Hellénique des Communications Aériennes S.A. (S.H.C.A.) | Athens |
| Société de Navigation Aérienne Yugo-slave (Aéroput) | Belgrade |
| Nord-Africa Aviazione S.A. (N.A.A.) | Bengasi (Cyrenaica) |
| Deutsche Lufthansa Aktiengesellschaft (D.L.H.) | Berlin |
| Deutsch-Russische Luftverkehrs Gesellschaft (Deruluft) | Berlin (and Moscow) |
| Tata Sons Ltd. | Bombay |
| S. A. Belge d'Exploitation de la Navigation Aérienne (Sabena) | Brussels |
| Magyar Légiforgalmi Részvénytársaság (Malert) | Budapest |
| Det Danske Luftfart Selskab A/S (D.D.L.) | Copenhagen |
| Koninklijke Luchtvaart Maatschappij voor Nederland en Kolonien (K.L.M.) | The Hague |
| Misr Airwork S.A.E. | Heliopolis (Egypt) |
| Aero O/Y | Helsinki |
| Imperial Airways Limited | London |

| | |
|--|----------------|
| British Continental Airways, Limited | London |
| Lineas Aereas Postales Españolas (L.A.P.E.) | Madrid |
| Avio Linee Italiane S.A. (A.L.I.) | Milan |
| Det Norske Luftfart Selskap Fred. Olsen & Bergenske A/S | Oslo |
| Compagnie Air France | Paris |
| Československá Letecká Společnost (Avioslava) | Prague |
| Československe Statni Aerolinie (C.S.A.) | Prague |
| Syndicato Condor Ltda. | Rio de Janeiro |
| Aereo Espresso Italiano (A.E.I.) | Rome |
| Ala Littoria S.A. (A.L.S.A.) | Rome |
| A.B. Aerotransport (A.B.A.) | Stockholm |
| Oesterreichische Luftverkehrs A.G. (Austroflug) | Vienna |
| Polskie Linje Lotnicze (Lot) | Warsaw |
| S.A. Suisse pour la Navigation Aérienne (Swissair) | Zürich |

It is important to bear in mind that the I.A.T.A. is a free union of national subsidized companies and not a cartel dividing up the European air network. Each company preserves its identity and ultimate freedom of action. Article 1 of the Statutes provides “(b)” that “the objects of the Association are the establishment of unity in the exploitation of air lines in which territories of two or more States are concerned,” and “(c)” that “the independence of its members is absolutely respected.”⁴ Its

⁴ (Translation) “The activity of the I.A.T.A. must be judged in the same manner as that of the International Aeronautical Federation. One can never assert often enough that the F.A.I. and the I.A.T.A. are private organisations, representing only private interests, and that they can in no way be compared to an inter-

primary duty is to register what might be called the collective expression and immediate operational requirements of the European air transport companies, virtually all of which are members of the Association.

At its twenty-ninth session held in March, 1933, the I.A.T.A. supported the resolution adopted by the Air Transport Committee of the International Chamber of Commerce in November, 1932, condemning the internationalization of civil aviation.⁵

While its program is still chiefly confined to the European area, the fact that Brazilian, Indian, and North African companies are now members of the I.A.T.A. would suggest that the scope of the I.A.T.A. is not meant to be restricted to European companies, some of which, it is true, such as Air France, Imperial Airways, and the K.L.M.,⁶ reach out to other continents.

The I.A.T.A. holds biennial sessions, the thirty-fourth having been held at Brussels in August, 1935, and the thirty-fifth at Berlin in January, 1936. Reports on the questions figuring in the agenda are submitted to the sessions by the postal, radiotelegraphic, technical, cash examination, legal, combined transport, and unification of accounts committees. A large number of operational questions of a very varied character have already been

national union of a public and juridical character such as the C.I.N.A. . . . Further, that which was said above regarding the F.A.I. and the I.A.T.A. applies equally to the International Chamber of Commerce." Alfred Wegerdt, "La Réglementation internationale de la navigation aérienne," *Revue Aéronautique Internationale*, Paris, March, 1933, p. 53.

⁵ *Information Bulletin*, I.A.T.A., No. 19, The Hague, 1933, p. 34. See *infra*, pp. 169-170, for an account of the International Chamber of Commerce's attitude.

⁶ Representatives of the Aeronautical Chamber of Commerce of America and of West Australian Airways attended the thirty-second session held in August, 1934. It was not found possible for the I.A.T.A. to accept the former's invitation to hold the thirty-third session in the United States. *Ibid.*, No. 22, 1934, p. 48.

discussed by the I.A.T.A., which has frequently been called upon to organize coöperation between companies for the achievement of some definite object, such as the publication of a monthly time-table for air lines (published at Paris under the authority of the I.A.T.A., since 1921); the establishment of an international bill of lading, together with an international passenger ticket (1927); combined air-rail transport, etc. Although the I.A.T.A. naturally examines questions from the distinctive point of view of the operating companies, its inquiries and those undertaken by other international bodies often run along parallel lines. It is, therefore, necessary for it to maintain close relations with other bodies interested in aviation, especially those of a legal and technical character.

Tariffs

Tariffs in European air transport are usually fixed within the framework of the I.A.T.A., and then submitted by the national company in question to its subsidizing government for approval. Tariffs are calculated and published as between termini, without separate rates from frontier to frontier. For example, through rates are quoted from Paris to London and vice versa, the rate at Paris being usually given in francs, and that at London, usually in sterling. In principle and in fact, there is equivalence between these amounts. The tariff is, therefore, international.⁷

Several examples will be given to indicate the practical nature of the I.A.T.A.'s program.

⁷ Such equivalence in this particular case has come about partly as the result of intensive competition in rates and services between the British and French companies. Where there is a complete or virtual absence of agreement between companies, it is not surprising that such should be the result.

*General Conditions for the Transport of Passengers
and Baggage and of Goods by Air*

After the conclusion of the Warsaw Convention in 1929,⁸ the I.A.T.A., anticipating its entry into force, established, on the basis of the Convention, the "General Conditions for the transport of passengers and baggage and of goods," which were adopted at its Antwerp session held in September, 1930. These General Conditions entered into force for all the members of the I.A.T.A. on February 13, 1933 (the day on which the Warsaw Convention became effective), not only for international but also, going beyond the Convention in this respect, for national air transport.⁹ These were clearly practical decisions on the part of the I.A.T.A.

In studying the application of the conditions of the Warsaw Convention, the I.A.T.A. profited by the experience of the railway administrations, members of the International Railway Union, the General Conditions having much in common with the Berne Conventions of 1924¹⁰ concerning the transport of passengers and baggage and of goods by rail. This facilitated the conclusion of the agreements referred to later in the present chapter, between the I.A.T.A. and the I.R.U. on the combined transport of passengers, baggage and of goods by air and rail. It is hoped that in the future the General Conditions may without difficulty be adapted to an agreement with maritime transport undertakings.¹¹

⁸ See *supra*, Chapter VI.

⁹ See "General Conditions" in *Information Bulletin*, I.A.T.A., No. 14, The Hague, 1930, p. 126.

¹⁰ The Berne Conventions of 1924, as revised at Rome in 1933, are not yet in effect. See *supra*, Chapter VI.

¹¹ D. Goedhuis, *La Convention de Varsovie du 12 octobre, 1929*, The Hague, 1933, p. 102.

Combined Air and Rail Transport

The organization of combined international transport of passengers, baggage, and goods by air and rail was recommended by the League of Nations Advisory and Technical Committee for Communications and Transit in 1928,¹² and by the International Chamber of Commerce in 1929.

For the combined transport of passengers and baggage, the way was prepared by arrangements between national railway administrations and air transport companies in various countries (notably in Germany and Belgium), in order to enable air passengers to continue their journey by rail in the event of interruption of flight. These arrangements were taken as a basis for discussion between the I.A.T.A. and the I.R.U. In 1930, a form of contract between railway administrations and air transport companies was approved by these two bodies, which recommended it for signature to their respective members. According to the terms of this contract, the national railway administration undertakes to carry passengers and baggage without payment, on production of a requisition issued by the national air transport company entitling the passenger to a railway ticket to any destination. The railway administration will, in addition, accept requisitions from all air transport companies affiliated with the I.A.T.A. serving the country in question. In every case, the cost of carriage owing to the railway administration will be paid by the air transport company which is party to the contract, the latter having recourse against the company or companies whose requisitions have been accepted by the railway administration. Passengers and baggage carried by rail under the

¹² Doc. C.157.M.43.1928.VIII. Geneva.

provisions of the contract are subject to the Berne conditions of carriage by rail.

In 1934, the following companies members of the I.A.T.A. had concluded contracts with the railway administrations of their respective countries on the combined transport of passengers and baggage, in the form proposed by the I.A.T.A. and the I.R.U.: the Austrian, Belgian, British, Czechoslovak, Dutch, Finnish, German, Greek, Hungarian, Polish, Swedish, and Swiss, as well as Deruluft (German-Soviet) and the Federazione Nazionale Fascista Imprese Trasporti Aerei (which includes all the Italian companies).¹⁸

On adopting the contract, the I.A.T.A. drew up a Convention for the internal regulation among its members of matters arising from the combined transport of passengers and goods. This Convention came into force on March 1, 1932, for all members of the I.A.T.A. which had adhered to it and had signed a contract, according to the model adopted by the I.A.T.A. and I.R.U., with the railway administration of their own country. By 1934, all the members of the I.A.T.A., with the exception of Tata Sons Ltd. (Bombay), had signed this internal regulation.^{18a}

It was found more difficult to come to an international arrangement for the combined transport of goods, because it was necessary to establish a uniform contract of carriage; also, this class of transport was already established in various countries according to two distinct systems. In some cases (for example, in Germany) the air transport company figured as the main contracting party vis-à-vis the sender, and the railway administration acted as an agent. In other countries (for example, Belgium),

¹⁸ *Information Bulletin*, I.A.T.A., No. 21, The Hague, 1934, p. 32.

^{18a} *Ibid.*

both the air transport company and the railway administration figured as contracting parties, each being responsible in its own sphere. Finally, the latter arrangement was adopted for international transport by the I.A.T.A. in September, 1932, and by the I.R.U. in March, 1933, in the form of an agreement which embodies the principles of the Warsaw Convention. Article 1 states:

The railway undertakings and air transport companies, hereafter enumerated, agree . . . to accept for despatch and to carry consignments of goods by combined international air-rail transport effected partly by rail and partly by air.

Article 2 provides for the application to the combined transport of goods by air and rail of (1) the General Conditions for the transport of goods by air and rail annexed to the agreement, and (2) the tariffs for air-rail goods transport fixed by the railway administrations and the air transport companies parties to the agreement. The only transport document applicable to the carriage will be the consignment note provided for in the General Conditions on air-rail carriage (this corresponds largely to the consignment note already established by the I.A.T.A.). The agreement is applicable to all transport effected in the territory of two states, even if the transport by air or by rail taken separately is effected within the frontiers of only one state. According to the terms of the General Conditions, the principles of the Warsaw Convention are extended to apply to air transport within the frontiers of a single state if it is combined with rail transport in another state.

In 1934, only Lufthansa and Sabena (the Belgian company) had signed a contract for the combined air-rail transport of goods with their respective national railway administrations.

In 1935, the I.A.T.A. amended the agreement and the General Conditions for the combined transport of goods in accordance with the Berne Convention, revised at Rome in 1933.

The air transport companies and the railway administrations of Belgium, Czechoslovakia, and Germany fixed in April, 1933, the text of an agreement on the combined transport of goods. This text is modelled after the contract on the combined transport of goods adopted by the I.A.T.A. and the I.R.U.

The railway companies of Great Britain now allow their agents to accept bookings for any air line operated by a member of the I.A.T.A.¹⁴

*Fluctuations in Exchanges and an
International Clearing House*

At its thirtieth session, held at London in September, 1933, the I.A.T.A. discussed a report on passenger and freight rates with reference to fluctuations in international exchanges. For instance, accounts between members of a pool being settled at intervals of from four to six months, the original equivalents for the services of the companies may have varied considerably because of exchange fluctuations.¹⁵

At its thirty-first session, held at Prague in March,

¹⁴ *Information Bulletin*, I.A.T.A., No. 21, The Hague, 1934, p. 32.

¹⁵ Two examples:

Berlin sells a Vienna-Rome ticket quoted in Austrian shillings, and cashes either shillings or marks at the shilling's exchange value of the day. Accountancy between Berlin and Rome is only in lire or marks; consequently, a third exchange will enter into the settlement of the account.

A ticket from Vienna to Venice is sold in Venice at the rate of 135 shillings, corresponding at the current exchange to 280 lire, while the ticket from Venice to Vienna is sold at Venice for 325 lire. There is a difference of nearly 20 per cent between the two prices for the same trip.

1934, the I.A.T.A., having considered the report of the committee set up to study the possibility of introducing an "international currency for accountancy purposes," was of opinion that the introduction of such currency should be postponed for one year "pending the results of the attempts now being made with a view to stabilising the currencies." The I.A.T.A. also decided at this session that "the problem of an international clearing house shall be postponed for a year pending the solution of preliminary questions."¹⁶

Time-Tables and Tickets

At the same session, it was decided that, from 1935 onwards, in order to accommodate the public and take into account the desire of the postal administrations to limit so far as possible changes in air time-tables, the year will be divided into two seasons: (1) the summer season, beginning with the date on which "summer time" becomes effective in Belgium and France, and concluding on the date on which summer time ends in Belgium, France, Great Britain, and the Netherlands; and (2) the winter season, which will be governed accordingly. An international air time-table conference meets annually at Berlin under the auspices of the I.A.T.A.

All the air companies which are members of the I.A.T.A. have agreed to a reduction of 30 per cent on return tickets; the reduction is allowed on condition that the traveller starts his return journey from the place of destination of the outward journey, and within two months of the day of departure. The following clause is of interest as indicative of increasing coöperation between the air transport companies:

¹⁶ *Information Bulletin*, I.A.T.A., No. 21, The Hague, 1934, pp. 55-56. It appears that no further steps have been taken.

Where no special arrangements have been made, the traveller is entitled to use for the return journey any of the existing connections for which the official tariffs are the same, provided no return booking has been made.

Where tariffs are different, the passenger will pay the difference.¹⁷

The I.A.T.A. encourages the pooling arrangements between companies,¹⁸ but does not, apparently, take any direct part in their conclusion.

INTERNATIONAL UNION OF AVIATION INSURERS

There are numerous risks connected with aviation, such as those to pilots and passengers, damage to, or loss of, aircraft, mail, and freight, and liabilities to third parties on the ground. For some years, underwriters have recognized the special character of the insurance of aviation risks.

In Great Britain, the leading insurance companies transact air insurance through either one of two central organizations, the British Aviation Insurance Company and the Aviation and General Insurance Company (the latter dating only from February, 1935). On the Continent, insurance companies transact air insurance through their own pools, several companies in each country concentrating their efforts in one organization. It appears that the national air insurance pool is not so solidified as the concentration of British companies. The activities of these specialized organizations should facilitate the insurance of the various risks by helping to raise the standard of construction by means of coöperation with the surveying societies and builders, and also by encouraging improved navigation.

¹⁷ *Information Bulletin*, I.A.T.A., No. 21, The Hague, 1934, p. 59.

¹⁸ See *supra*, Chapter II.

At a conference held at London in June, 1934, attended by representatives of British, Danish, Dutch, Finnish, French, German, Italian, Norwegian, Swedish, and Swiss insurance companies, the International Union of Aviation Insurers was established, its secretariat being placed at London for the first year of operation. The Rt. Hon. Viscount Wakefield, President of the British Aviation Insurance Company, understood that "the underwriters were not endeavouring to arrange for a common basis of rating of premiums; indeed, they were much more anxious to remove the difficulties and obstacles that were almost inherent in aviation of an international character than they were to assess rates beyond an economic costing of hazards and liabilities."¹⁹

It is possible that the International Union of Aviation Insurers will, by its decisions, speed up the ratification of the Rome Convention on the liability of the operator to third parties on the ground. It may be expected to influence the work of the C.I.T.E.J.A. in dealing with other questions of liability.

AIR INTERNATIONAL REGISTER (A.I.R.)

The Air International Register was established at a conference of national registration and classification bodies held at Paris in 1927. The Bureau Veritas, with its seat at Paris, a maritime registration and classification au-

¹⁹ "Aviation Insurance," British air number, *The Times*, London, June 26, 1934.

The founder members of the Union are as follows: the British Aviation Insurance Co. Ltd., Deutscher Luftpool, Consorzio Italiano di Assicurazione Aeronautiche, French Consortium, Nordiska Pool, Zürich General Accident and Liability Insurance Co. Ltd., Société Suisse d'Assurance contre les Accidents (Winterthur), and Dutch Pool. After its formation, applications for membership were received from the following: Compagnie Mutuelle des Assurances Aériennes and United Aviation Group. *Revue Aéronautique Internationale*, Paris, December, 1934, pp. 400-401.

thority, which had had an air section since 1922, was entrusted with the secretariat and publication of the A.I.R., in which the following bodies were originally associated: the American Bureau of Aircraft, the British Corporation Register, the Bureau Veritas, the Germanischer Lloyd, the Imperial Japanese Marine Corporation, the Norske Veritas, and the Registro Italiano. These bodies agreed to publish jointly registrations of civil aircraft belonging only to the nationalities in question, and classifications of such aircraft according to the methods employed for maritime shipping insurance. The American and British bodies later withdrew.

It was decided in 1933 to create a technical committee charged with a program which would include, among others, a study of the following questions: the unification of statistics on accidents, principles of rules regarding aircraft performance, length of serviceability of aircraft, test flights, load capacity of aircraft, and periods of aircraft inspection. The principal object of this technical study will be to endeavor to establish unified regulations. The seventh conference of the A.I.R. was held at Rome in October, 1935.

The existence of the A.I.R. is evidence of the need for the standardization of the criteria for rating aircraft.

INTERNATIONAL AERONAUTICAL FEDERATION (F.A.I.)

This organization, usually known by its French title, *Fédération Aéronautique Internationale* (F.A.I.), was founded in 1905, has its seat at Paris, and is chiefly interested in the international regulation of private air touring, sport aviation, and the confirmation of speed records. Its latest conference was held at Dubrovnik (Yugoslavia) in September, 1935. It is composed of 35 national air associations.

COMITÉ JURIDIQUE INTERNATIONAL DE L'AVIATION
(C.J.I.A.) AND OTHER BODIES

The Comité Juridique Internationale de l'Aviation (sometimes referred to as the C.J.I.A., and not to be confused with the C.I.T.E.J.A.), founded in 1909, is still engaged upon its monumental task of establishing a model code of air law, both public and private. It has included among its original and present members, grouped in various national committees, some of the earliest and most distinguished authorities on air law. The C.J.I.A., which has its seat at Paris, held its ninth Congress at Budapest in 1930.

The International Law Association, which last met at Budapest in September, 1934, and also the Institut du Droit International, have made numerous studies and recommendations on air law.

BODIES WHOSE ACTIVITIES ARE NOT CONFINED TO AIR
QUESTIONS

INTERNATIONAL UNION ON TELECOMMUNICATIONS

It was evident immediately after the outbreak of the Great War that the International Radiotelegraphic Convention and the International Radiotelegraphic Regulations adopted at London in 1912, to replace the Berlin Convention of 1906, would have to be modified very considerably for a number of reasons, among which was the absence in the London agreements of any provisions for wireless in air navigation.

In Chapter IV above, reference was made to the close and effective relations between the C.I.N.A. and the International Bureau of the International Union on Telecommunications at Berne, shown in a practical manner in

the elaboration of the Madrid Convention of 1932 and the modifications made to the C.I.N.A. wireless regulations. The Washington Conference of 1927, in concluding the new Convention, had taken closely into consideration the recommendations made by the C.I.N.A. in connection with the international regulation of wireless in air navigation.

UNIVERSAL POSTAL UNION

The Universal Postal Union, which was established by the Universal Postal Convention, drawn up at a Conference of twenty-two states held at Berne in 1874, now counts among its members every European state and territory and, in fact, every state and territory in the world, with a few minor exceptions. According to Article 1 of the Convention ²⁰ (Translation):

The countries between which the present Convention is concluded form, under the name of "Universal Postal Union," a single postal territory for the reciprocal exchange of correspondence. The purpose of the Postal Union is also to assure the organisation and perfection of the various international postal services.

Article 24 provides for the establishment of a central office as follows:

1. A central Office, functioning at Berne under the name of "International Bureau of the Universal Postal Union" and placed under the supervision of the Swiss Postal Administration, serves as an organ of liaison, information and consultation for the countries of the Union.

This Bureau is charged, principally, with assembling, coordinating, publishing and distributing information of all kinds which concerns the international postal service; with giving, at the request of the interested parties, an opinion on questions in dispute; with making known requests for modi-

²⁰ Unless otherwise stated, quotations are made from the Postal Convention adopted at Cairo in 1934.

fication of the Acts of the Congress; with notifying the changes adopted; and, in general, with undertaking the studies and works of editing and documentation which the Convention, the Agreements, and their Regulations attribute to it, or which may be entrusted to it in the interests of the Union.

2. It acts as a clearing-house for the settlement of accounts of all kinds relative to the international postal service between Administrations requesting such intervention.²¹

The Convention is subject to revision at least every five years at a Congress of the Union.

The Air Commission of the Peace Conference considered the necessity of organizing, by means of international coöperation, the transport of mail by aeroplane or dirigible. When the Convention of 1919 was drawn up, the Air Commission rejected a proposal of the Italian delegation to add to the Convention an Annex dealing with postal questions.²² The Paris Convention mentions the question of air mail in Article 36:

Nothing in the present Convention shall be construed as preventing the contracting States from concluding, in conformity with its principles, special protocols as between State and State in respect of customs, police, posts and other matters of common interest in connection with air navigation.

It was at the Madrid Congress of the Universal Postal Union, held in 1920, that the question of the transport of mail by air was first seriously raised. On that occasion, it was decided to regard air mail as an extraordinary service, the arrangements for which were to be left to the administrations of the states concerned.

²¹ References were made to the Postal Union and its International Bureau, IV, p. 83.

²² Albert Roper, *La Convention Internationale du 13 octobre, 1919*, Paris, 1930, p. 47.

At the next Congress, held at Stockholm in 1924, air transport having in the meantime made considerable advance, more precise provisions, concerning the fixing and collection by administrations of transit rates for air mail, were incorporated in the Convention.

Partly because the C.I.N.A., whose time was absorbed by other matters, had not examined the question of the international organization of air mail by 1926, the International Chamber of Commerce suggested to the postal administrations that a special conference should be held with a view to the conclusion of an international agreement. The proposal of the International Chamber of Commerce was communicated officially by the postal administration of the U.S.S.R. The International Air Traffic Association (I.A.T.A.) also submitted to the Universal Postal Union suggestions to be placed before the Conference.

Thirty-eight postal administrations²³ were represented at the Air Mail Conference convened at The Hague in 1927; fourteen European air transport companies were also represented, including Deruluft and the Soviet air transport company, as well as the International Chamber of Commerce and the I.A.T.A. The following is extracted from the recommendations of the Conference²⁴ (Translation):

The principal aims of the Conference were the unification of public fees and the simplification of measures for the remuneration of carriers. These appeared to everyone the most effective means of developing and popularising the use of air mail.

As regards postal correspondence, it has been possible, as

²³ Including several non-European postal administrations.

²⁴ *L'Union Postale Universelle, sa fondation et son développement, 1874-1929*, Berne, 1929, published by International Bureau of the Union.

a general rule, to adopt the principle of transport costs in proportion to weight and distance, and of fees based on weight and distance over large areas; it has, however, been necessary to make an exception in the case of services causing extraordinary running costs.

As the transport of mail by air is still in process of organisation and is used to a relatively small extent, it has not seemed necessary to proceed immediately to the establishment of definite regulations compulsory on all the Offices.

The Conference has adopted experimental texts to be put into force from January 1st, 1928, as far as possible, so that the experience gained may furnish the basis of a further examination by the Committee of Inquiry of the Postal Union and may facilitate the decisions to be taken by the London Congress.

The report adds:

The above is a good indication of the limits, the character and the spirit of the Conference. . . . If the Postal Union virtually came into being in 1863, air mail in 1927 definitely takes its place among the great public services rendered by the Universal Postal Union.

The measures proposed by The Hague Conference were submitted to the next Congress of the Union, held at London in 1929. They were approved almost without modification. The Congress drew up the provisions regarding the conveyance of letter mails by air, which, as provided for in the final protocol to the Universal Postal Convention of June 28, 1929, form an integral part of the Convention and its Regulations. The same Congress drew up a further set of provisions regarding the conveyance of postal parcels by air.²⁵

²⁵ The text of these provisions will be found in *League of Nations Treaty Series*: the 1927 Provisions on the Conveyance of Mails by Air, LXXV, 8-37; the 1927 Provisions on the Transmission of Air Parcels, LXXV, 40-59; the Universal Postal Convention (1929) re-

On the initiative of the Belgian government, an air mail conference was held at Brussels in October, 1930, composed of representatives of a number of European air and postal administrations. A second Brussels Conference, planned for October, 1931, had to be postponed indefinitely for a number of reasons, these being chiefly of a financial nature. However, an important preparatory meeting took place at Prague in June, 1931, at which the postal and air administrations of eleven European countries were represented.²⁸ The report sent by the Prague meeting to the postal administrations reads, in part, as follows:

The most difficult matter laid before the Committee was the possible creation of a system of night services, with the question as to whether these services would be worked all the year round, or if, for the time being, they would be limited to the summer months.

The Committee was of opinion that the confidence of the public could only be won by a regular service. Experience has shown that, as things now are, and in face of the climatic conditions of Europe, it is impossible to work a winter service with even approximate regularity.

The Committee consequently decided unanimously that any night service must, for the time being, be limited to the summer months, but could be prolonged later on according to the progress made in aeronautic engineering. . . .

lating to air mail, CII, 504-553. The London Congress decided that the duration of the last named could be modified during the five-year period by common agreement of the signatories.

²⁸The French proposals at the Prague meeting suggested, apart from other means of operating a European network of postal air lines, its management by an international company, and specified that such a company "would only be possible supposing the League of Nations was capable of taking charge of a public international service." At the same conference, the air and postal administrations of the Netherlands suggested the formation for Europe of an air navigation "concern" in the form of a limited liability company, of which the European air navigation undertakings would be the shareholders.

The Conference of Brussels had gone thoroughly into the question of a special air fee. The discussion had shown that some countries favour the principle of the transmission of the ordinary mails by air without special air fee, but that most of the postal administrations are not yet in a position to abolish the air fee.

The Preparatory Committee confirmed the resolution of Brussels which left each administration free to maintain or to abolish the special air fee as it deemed best, subject to the consent of the countries of transit.

The principle of adopting a uniform air fee applicable to the whole of Europe gave rise to a lengthy discussion.

With a view to conciliating the various points of view, the Committee finally resolved to recommend the institution of a uniform air fee not exceeding 15 gold centimes per unit of weight, with liberty to reduce the air fee normally charged, on correspondence with neighbouring countries. . . .

As things are at present, the creation of a specifically postal system of air lines is out of the question. The costs of working air lines are in fact very heavy and, except in a few cases, they cannot be covered by the receipts derived from the transport of passengers, goods, etc., and the subsidies granted by the Governments of various countries have to be taken into consideration.²⁷

Air Mail Provisions of the Cairo Postal Convention

While the Cairo Convention of 1934 (effective January 1, 1935) maintains the distinction between "ordinary" and "extraordinary" services, it reduces considerably the maximum air surcharge for "ordinary" services. This maximum is now 15 gold centimes per 20 grammes per 1,000 kilometres, instead of 25 gold centimes as laid down in the London Convention. The surcharge, being a maximum, does not bind the administrations, which

²⁷ *L'Union postale*, Berne, July, 1931, International Bureau of the Union, pp. 214-216, 218.

are not obliged to levy a special fee for air transport; in the latter event, however, they must give notice to the country of destination and make a previous agreement with the countries of transit.²⁸ If the country of destination were not so informed, it could assume that a special fee was charged, and thereupon demand the payment of this fee before delivering the air mail in question; also, the countries of transit might refuse to recognize such as air mail, claiming that the letters did not bear special stamps. However, the fact that administrations are now permitted to abolish entirely the surcharge will allow them, if they so desire, to make large or small scale experiments, treating the air route as the normal manner to transport mail.

In relations between European countries, the maximum charge is fixed for any distance unless the geographical situation of the country renders it necessary to fix the surcharge by 1,000 kilometres. For air mail carried by a service specially created and maintained, the fees need not be limited to the tariff laid down in the Convention.²⁹

INTERNATIONAL OFFICE OF PUBLIC HYGIENE

The International Office of Public Hygiene was established in 1907, following the International Sanitary Convention concluded at Paris in 1903; its seat is at Paris. One of its functions is to lay down regulations for quarantining vessels coming from infected ports. Aircraft journeying between aerodromes in widely separated countries present the same danger of the spread of disease as vessels, but under different conditions. Special measures are necessary to protect international public

²⁸ The countries of transit are those between the country of origin and the country of destination.

²⁹ Articles 2, 4, 12 and Final Protocol, Air Mail Provisions of the Cairo Postal Convention of 1934.

| | | |
|---------------------------|--------------------------|------------|
| Egypt | Morocco | |
| Germany | Netherlands | (excluding |
| Great Britain and North- | colonies) | |
| ern Ireland (including | Poland | |
| certain colonies, protec- | Roumania | |
| torates, and mandates) | United States of America | |
| Iraq | Syria and Lebanon | |
| Italy | Tunisia | |
| Monaco | Turkey | |

A Quarantine Commission on Air Navigation was established by the International Office of Public Hygiene in October, 1933, with which the Secretary-General of the C.I.N.A. collaborates.

INTERNATIONAL CHAMBER OF COMMERCE

Following a resolution adopted at its second Congress, held at Rome in 1923, the International Chamber of Commerce set up an Air Transport Committee composed of "specialists in finance, industry, law and aviation . . . to examine what measures should be taken to promote both present and future development of civil and commercial aviation." The Committee, which was instructed to keep in close touch with national and international organizations interested in air navigation, meets from time to time, most of the items on its agenda being prepared in advance by its three subcommittees. Texts and resolutions adopted by the Committee are submitted to the Council of the Chamber, which meets four times a year, and to the Congress, convened every two years.

As already mentioned in the present chapter, The Hague air mail conference was convened in 1929 at the suggestion of the International Chamber of Commerce.

Acting on the advice of its Air Transport Committee, the Chamber has made numerous recommendations on the unification of private air law, combined air-rail transport, air mail, the necessity of removing general and certain specific barriers to air navigation, etc.

The principle item on the agenda of the session of the Committee held on November 23, 1932,⁸¹ was the internationalization of civil aviation, which was then under discussion in the Disarmament Conference at Geneva. The following resolution was adopted:

The Air Transport Committee, without wishing to express an opinion on the political aspects of the problem, and with confidence in the desire of Governments for peace as well as in the means they will be able to find in order to assure its permanence, considers that the internationalisation of civil aviation would be a serious obstacle to the free development of commercial aviation as also to the progress of international commerce.⁸²

It is interesting to notice the phrase, "free development," in view of the varying but still necessary government subsidies which are granted to European air transport companies. Only the Paris-London line might do without a subsidy. Most members of the Air Transport Committee of the International Chamber of Commerce are either directly or indirectly interested in air transport operation or the aircraft industry. There is frequently a great deal in common between certain recommendations of the International Chamber of Commerce on air transport and those of the International Air Traffic Asso-

⁸¹ The Air Transport Committee met under the chairmanship of M. Pierre-Etienne Flandin, who was not a member of the French cabinet at this particular moment. It will be recalled that the French government had sponsored the internationalization of civil aviation at this very time.

⁸² *Brochure No. 4*, Vienna Congress, International Chamber of Commerce, 1933, p. 21.

ciation.³⁸ This is no doubt largely because the same experts often serve on both bodies.

The Air Transport Committee's resolution against the internationalization of civil aviation was reproduced in the report submitted by the General Committee on Transport and Communications to the Congress of the International Chamber of Commerce, held at Vienna in May and June, 1933. The Congress did not, however, adopt a resolution on this particular question.

INTERNATIONAL FEDERATION OF NATIONAL STANDARD- ISING ASSOCIATIONS

The International Federation of National Standardizing Associations (I.S.A.) was formed in 1926; its seat is at Zürich. It is composed of a national standardizing association from each of the following countries: Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, Italy, Japan, the Netherlands, Norway, Poland, Roumania, Sweden, Switzerland, the United States of America, and the U.S.S.R.

The national standardization organization of each country preserves its final authority, while an international agreement relating to standards may be obtained only by the voluntary consent of all interested parties, with equal voting rights. The aims of the Federation are to lay the foundations of an international agreement relating to standards, by providing for an exchange of information on the results of standardization in the various countries, to develop general directing principles to help national standardization organizations, to seek uniformity among the standards for which they are re-

³⁸ It will be recalled that the I.A.T.A., in March, 1933, supported the resolution of the Air Transport Committee of the International Chamber of Commerce against the internationalization of civil aviation.

sponsible, and to coöperate with international bodies dealing in one way or another with standardization.

The I.S.A. Technical Committee for Air Navigation keeps in contact with the C.I.N.A., the I.A.T.A., the A.I.R. and other bodies interested in the international organization of air navigation. The national organizations of the following countries have participated in the work of this technical committee: Belgium, Czechoslovakia, Germany, Finland, France, Italy, the Netherlands, Sweden, and the U.S.S.R. The fifth session of the I.S.A. Comité-20-Aéronautique, as it is usually known, was held at Berlin in October, 1935. Standardization in aircraft characteristics is essential for international air transport.

INTERNATIONAL METEOROLOGICAL ORGANISATION

The International Meteorological Organisation was founded in 1872. Its most important decision in connection with air navigation was the adoption at its Copenhagen conference in 1929 of an international code for meteorological messages, the text of which was introduced into Annex G of the Paris Convention at the nineteenth session of the C.I.N.A., held at London in 1931.⁸⁴ The secretariat of the Organisation is at De Bilt (the Netherlands).

INTERNATIONAL COMMISSION ON ILLUMINATION

The International Commission on Illumination, whose principal object is the study of questions connected with the development of lighting, with a view to making international recommendations, was founded in 1913 and is composed of the National Lighting Committees of the following countries: the Argentine, Austria, Belgium,

⁸⁴ *Official Bulletin*, C.I.N.A., No. 19, pp. 35-52.

Czechoslovakia, France, Germany, Great Britain, Hungary, Italy, Japan, the Netherlands, Poland, Sweden, Switzerland, and the United States of America. The secretariat is maintained at Teddington (England).

A preparatory committee on lighting in air navigation first met at Berlin in 1930, and the Committee on Illumination in Air Navigation, at Zürich in 1932. International standards of signalling, light strength, color, and type of illumination for airport and airway lighting are under consideration.³⁵

INTERNATIONAL HYDROGRAPHIC BUREAU

The International Hydrographic Bureau was established at Monaco in June, 1921, and was placed, as from October 5, 1921, under the authority of the League of Nations. Since 1929, in collaboration with the C.I.N.A., it has been pursuing the task of the standardization of maps used in air navigation, notably as related to maritime waters.

³⁵ While some 40 per cent of United States civil flying is said to be done at night, it is doubtful if 5 per cent of the total European air transport mileage is carried out after dark. The numerous states in Europe still raise financial and political difficulties. It is possible, however, that the future of European air transport lies with very fast "daylight" aircraft operating, with very few landings, from daybreak to nightfall.

VIII

THE LEAGUE OF NATIONS AND AIR NAVIGATION

THE interest of the League of Nations in air navigation arose principally from (1) the existence of the Organisation for Communications and Transit, set up by the League in conformity with Article 23 (e) of the Covenant to "make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League"; and (2) the examination of the question of the possible use of civil aviation for military purposes, made in the preparation of the draft Convention by the Preparatory Disarmament Commission.

It is believed that Chapter I above demonstrated, if such demonstration were required, the intimate connection between civil and military aviation. For this reason, the question of the relationship between civil and military aviation will not be discussed here.

ORGANISATION FOR COMMUNICATIONS AND TRANSIT

The principle ruling the Organisation for Communications and Transit, which has the oldest and the most highly developed constitution of all the League's technical organizations, is that the appropriate government representatives and technical experts should work together directly on problems relating to communications and transit, without having to act through diplomatic and political agents. A constant endeavor has been made to deal with such problems on their legal and technical merits, eliminating so far as possible the intrusion of purely political considerations.

The Transit Organisation is based on, and can be modified by, resolutions of the Assembly, which votes its budget and discusses its annual report. Its chief organ, the General Conference, deriving authority directly from the governments, acts on its own responsibility in technical matters. In its internal working arrangements, the Transit Section, the Secretariat of the Organisation, is autonomous under existing practice. The Organisation has no legislative powers, because Conventions adopted must be signed by government representatives, while its other decisions have only the value of recommendations. Neither its recommendations, which are made to governments, nor the texts of its Conventions are subject to the approval of the Assembly or the Council. The Assembly and the Council, notified of the decisions reached, have a right of supervision enabling them, by a unanimous vote, to prevent the decisions being communicated to the governments and to ask for the re-examination of a particular problem. Neither the Assembly nor the Council has so far exercised this right. States outside the League may belong to the Organisation, thereby enjoying the same status as League Members, even to the extent of regular membership of the Advisory and Technical Committee. The decision to admit non-member states to the Organisation may be taken by the Assembly or the General Conference. The Council may invite states not belonging to the Organisation to attend General Conferences, in whose proceedings, except for purely internal matters, they participate on an equal footing with states which are members. Ecuador,¹ Egypt, Turkey,² and the United States of America took part in the Third General Conference, held in 1927; and Egypt, Turkey, and the United

¹ Ecuador joined the League in 1934.

² Turkey joined the League in 1932.

States, in the Fourth General Conference, held in 1931. A number of Americans, both in official and private capacities, have been, and are, members of technical committees of the Organisation.

The Transit Organisation acts principally through the following bodies:

Ordinary or extraordinary General Conferences, the fourth ordinary General Conference having been held at Geneva in 1931. The General Conference usually meets every four years, and is composed of representatives of all the states which are members of the Organisation. There are also partial or even regional conferences, such as the European Road Traffic Conference which met in 1931. The chief delegates to such conferences usually have the power to sign conventions on behalf of their governments.

The Advisory and Technical Committee for Communications and Transit, often referred to as the Transit Committee, composed of members appointed by the states elected for this purpose by the General Conference, and of members appointed by states permanently represented on the Council. The members of the Transit Committee do not represent or commit the governments of the states of which they are themselves nationals. The Transit Committee prepares the work of the Conferences, draws up their draft agenda and supervises the execution of their resolutions. It deals with questions whose urgency or relatively limited scope renders a Conference impossible or unnecessary; it acts as an advisory body to which the Council refers matters requiring immediate investigation. It prepares the annual report to the Council and the Assembly on the work of the Organisation, as well as the Organisation's draft annual budget for the approval of the Assembly, and

constitutes a permanent tribunal for the friendly settlement of disputes concerning communications and transit. The breadth of interest of the Transit Committee and the elasticity of its internal working arrangements endow it with many important and useful functions. "The Committee calls in experts, sets up any subsidiary committees which its work requires and, in the light of experience, has gradually built up a number of new instruments of international co-operation."³ The nineteenth session of the Transit Committee was held in the autumn of 1935.

Apart from a number of special and temporary committees and subcommittees, the Transit Committee has established the following permanent committees: Electrical Questions, Inland Navigation, Legal, Ports and Maritime Navigation, Road Traffic and Transport by Rail. The Transit Committee invites most of the appropriate international organizations to be represented in an advisory capacity at its meetings. Certain organizations, depending on the agenda of the particular meeting, are invited to attend meetings of the permanent committees, and even special committees and subcommittees. These bodies are invited in an advisory capacity to general conferences. The Transit Committee is similarly represented, usually by its secretariat, at meetings of these organizations. It will not be possible to describe here the many practical achievements of the Transit Organisation in connection with different aspects of the various forms of communications and transit.⁴

³ *Ten Years of World Co-operation*, League of Nations, 1930, p. 210.

⁴ See *Collected Texts and Documents relating to the Constitutional Powers and Procedure of the Organisation for Communications and Transit*, Geneva, January, 1928; records of the General Conferences, sessions of the Transit Committee, and *Ten Years of World Co-operation*, pp. 207-231.

The Assembly decided in 1934 to have a study undertaken of the question whether corrections, adjustments, or improvements should be made in the constitution, practice, and procedure of League committees. The next year, the Assembly approved, *inter alia*, the following suggestions relating to the Transit Organisation made by a special committee which had studied the matter as a whole:

This organisation, as developed since its inception, has acted in practice within the League of Nations as a technical organisation for communications and public works. The Committee considers that its present essentially governmental organisation should be retained, and, indeed, more formally recognised as such.

The sole object of the changes now proposed is to simplify the organisation's procedure and practice and to secure better co-ordination between its work and that of other League organisations. These changes are:

(a) The present Advisory Committee should include all Governments desiring to be represented. The Committee should become purely governmental, each Government directly appointing its own representative.

(b) With this enlargement of personnel and specifically governmental character, the Committee could do both its own work and that of the general conferences as defined by the statutes of the Organisation, and there would be no need for the periodical governmental conferences now provided.

For the conclusion of an international convention, a special governmental conference would, of course, be required as at present.

(c) Between sessions of the Advisory Committee, the work of the organisation would continue to be controlled by the Chairman of the Committee in accordance with its standing orders. He should be assisted in this duty by a small technical committee, over which he would himself preside, consisting of members all selected by the Council from experts of high rank.

(d) The Chairman of the Advisory Committee should report regularly to the Council on the organisation's work, and the small technical committee could, when desirable, meet specially before or during the sessions of the Council.⁵

Consequently, considering it possible that the Council might ask the present Transit Committee to make suggestions relative to the modification of the Transit Organisation's statute, the Transit Committee, at its nineteenth session, instructed its chairman, in this event, to call on its Permanent Legal Committee or on any committee specially created for this purpose and whose members would be chosen by the chairman of the Transit Committee.

*The Transit Organisation
and Air Navigation*

At the second session of the Transit Committee, held in 1922, the following opinion was expressed: ⁶

The Organisation for Communications and Transit of the League of Nations has always been careful to consider all questions of international communications, whatever the method of transport, in order to co-operate in carrying out Article 23 (e) of the Covenant as directed by the resolutions of the Assembly. At the same time it has endeavoured to avoid interfering, in any way, with the activities of the special international organisations which are able to co-operate, in their own spheres, in work of this nature. Both the Provisional Committee on Transit and the Barcelona Conference have accordingly given repeated proofs of their interest in freedom of transit by road and air and in freedom of postal transit, and, if they abstained from recommending any special provisions for this purpose in the Convention on Freedom of Transit, this was merely because they were

⁵ Doc. A. 16, Geneva, 1935.

⁶ *Minutes, Second Session*, Advisory and Technical Committee for Communications and Transit, League of Nations, 1922, p. 43.

of opinion either that the time was not ripe for the consideration of a particular question, or that the question had already been dealt with by international arrangements which entirely satisfied the requirements of the Convention on Freedom of Transit.

Chiefly because of the existence and functions of the International Commission for Air Navigation (C.I.N.A.) which, according to Article 34 of the Paris Convention, is "placed under the direction of the League of Nations,"⁷ the Transit Committee did not set up a permanent committee on air navigation nor, up to 1930, even a special or temporary committee to deal with problems of air navigation as a whole. However, the Organisation and, more specifically, the Transit Committee, from the earliest years fully recognized the importance, even the necessity, of liberating air transport from the many national restrictions hindering its development, and of equipping it with at least a modicum of international regulation. The Transit Committee, therefore, not only drew the attention of governments to problems which required international action—for instance, the unification of private air law, with which a beginning had not yet been made⁸—but also it studied, and made recommendations on, certain specific questions, such as combined transport by air and rail.⁹

The Transit Organisation was charged by the Council with the technical examination of the delicate and many-sided question of the régime of communications of importance to the working of the League of Nations at times of emergency, in accordance with the carefully detailed measures foreseen in the resolutions of the As-

⁷ See *supra*, Chapter IV.

⁸ See *supra*, Chapter VI.

⁹ See *supra*, Chapters VI and VII.

sembly and the Council. Because of the probability of serious dislocations to the regular and normal means of communications in the event of a political crisis in Europe, it was considered essential to provide for measures which would ensure independent and swift communications between the seat of the League and the States Members. This necessitated, among other sides of the question, a technical examination on the part of the Transit Organisation of the following problems involving air navigation: the identification of aircraft effecting transport of importance to the working of the League at times of emergency, the régime to be observed by the States Members to guarantee the functioning of such transport, and the study of the layout of an aerodrome near the seat of the League. Following the completion in the early part of 1934 of the negotiations between the Secretary-General of the League and the States Members, the Transit Section established a comprehensive document containing a survey of this régime of communications; this document could, if necessary, be used as a practical guide.¹⁰

Prior to the opening of the Disarmament Conference in February, 1932, a special committee of experts, appointed by the Chairman of the Transit Committee, studied the fixing of rules relative to the adoption of a standard horse-power measurement for aeroplane and dirigible engines.¹¹ Shortly afterwards, the Transit Section prepared a study concerning the "Present Situation in Regard to Publicity of Civil Aviation, and Collection of Provisions in Force Concerning the Exchange or Pub-

¹⁰ *Systematic Survey of the Régime of Communications of Importance to the Working of the League of Nations at times of Emergency*, Organisation for Communications and Transit, League of Nations, 1934, 101 pp. See *supra*, Chapter IV.

¹¹ Doc. C.260.M.116.1931.VIII.

lication of Information relating to Civil Aviation,"¹² which was also used by the Disarmament Conference.

It is perhaps needless to point out that the Transit Organisation had always had a clear mandate, flowing from the Covenant, to concern itself with the international organization of air transport. Its authority and objectivity were recognized. The Committee of Experts on Civil Aviation of the Preparatory Commission for the Disarmament Conference, at its meeting held at Brussels in February, 1927, adopted a number of resolutions dealing with the relations between military and civil aviation, one of which was as follows:

At the present time, civil aviation in most cases has become national in character. It would seem desirable to encourage the conclusion of economic agreements between civil aviation undertakings in the different countries.

The Assembly of the League at its eighth session, held in the same year, considered the resolutions adopted by the Preparatory Commission for the Disarmament Conference on the basis of the report of the Committee of Experts on Civil Aviation, and adopted the following resolution:

The Assembly,

Whereas, in certain countries, there is at present a close connection from the technical point of view and from the point of view of organisation between the requirements and developments of civil aviation and those of military aviation;

And whereas this connection leads to difficulties in limiting air armaments without hampering civil aviation;

Declares that it is desirable, for this purpose, that the development of civil aviation should be directed solely towards economic ends to the exclusion of military interests;

Recommends all States Members of the League of Nations to act as far as possible on the recommendations made in

¹² Doc. C.95.M.47.1932.VIII and addenda.

this connection by the Preparatory Commission for the Disarmament Conference;

And requests the Council to instruct the Advisory and Technical Committee for Communications and Transit to consider practical methods likely to facilitate the conclusion of the agreements between aviation undertakings in the various countries which are referred to in these recommendations.

Further, the Third General Conference on Communications and Transit, which met at Geneva in 1927, referred to the Transit Committee a declaration submitted by the Swiss delegation, calling for an enquiry into questions of international organization in the field of air navigation.

The Transit Committee at its twelfth session, held in 1928, considered the Assembly's resolution and the communications of the General Conference, and adopted the following resolution:

The Committee considers it desirable to entrust to a special Committee of Enquiry the question of the action to be taken on the resolution of the last Assembly concerning economic co-operation between air navigation undertakings, in conformity with the recommendation unanimously adopted by the Committee of Experts on Civil Aviation of the Preparatory Commission for the Disarmament Conference.

The composition of this Committee will be fixed by the Chairman of the Advisory and Technical Committee, who is empowered to take all the necessary steps to promote co-operation between the Governments concerned.

The Committee of Enquiry thus constituted will also have to study the questions of international organisation in air navigation raised at the Third General Conference on Communications and Transit, and to make any suggestions to promote their settlement, if it considers it possible and desirable to do so.

Air Transport Co-operation Committee

The Chairman of the Transit Committee delayed for some time appointing the members of an Air Transport Co-operation Committee, in order to allow for the negotiations then in progress between the C.I.N.A. and certain states not parties to the Paris Convention.¹⁸ Finally, the governments of a number of countries were requested to suggest the names of one or more aeronautical experts who would be suitable members of an Air Transport Co-operation Committee, but who would serve on such a Committee as private experts, in no way committing the governments of which they were nationals. Out of these suggestions the members of the Air Transport Co-operation Committee were appointed and its first session was held at Geneva in July, 1930, under the chairmanship of Senator de Brouckère of Belgium. Nationals of the following countries took part in the deliberations as members of the Committee: Belgium, France, Germany, Great Britain, Italy, Japan, the Netherlands, Poland, Spain, Sweden, Switzerland, and Yugoslavia. The American member, being unavoidably prevented from attending, was replaced by the United States Vice-Consul at Geneva, as an observer. Three of the Committee's four rapporteurs and the Secretary-General of the C.I.N.A. attended the meeting in an advisory capacity.

Although serving on the Committee as private experts, most of its members are not only government officials, but, in a number of cases, prominent officials in government departments directing civil aviation. The debates were characterized by a high degree of authority, and gave frequent and frank expression to the serious problem of international air transport.

¹⁸ See *supra*, Chapters III and IV.

The Air Transport Co-operation Committee, at its first session, adopted resolutions on the "unification of public international law on air navigation," "co-ordination between organisations dealing with air navigation," "conditions for the admission of foreign undertakings engaged in regular international transport," "progress of international co-operation in the operation of air lines," "possibility of studying a special statute applicable to certain international air connections of general interest," "study of certain legal and administrative questions affecting the development of international co-operation in air transport," and "practical improvement in the working of air lines." The last-named resolution included the following: "A. extensive and systematic employment of combined transport; B. the constitution and operation of the main network of permanent air routes; C. postal air transport and D. periodical study of the economic development of air transport." The discussions had been wide in scope.

Paragraphs B and C read as follows:

B. The Constitution and Operation of the Main Network of Permanent Air Routes.

The Committee is of opinion that, in view of the international nature of air transport and of the precarious results hitherto obtained, a definite programme of co-operation should be prepared, at any rate in the European area, until such time as technical conditions allow of its extension. It decides to study the following questions:

1. The choice of permanent air routes to form the main system.
2. An international programme for the equipment of these routes so as to permit of uninterrupted day and night flying.
3. The manner in which this network should be operated, namely:

(a) The selection by inter-governmental agreement of qualified enterprises and the specification of traffic conditions;

(b) The granting to all undertakings, engaged in the traffic over this system, of the widest possible facilities for choosing their equipment, from the sole standpoint of efficiency, provided this equipment complies with the international requirements regarding navigability.

A special Sub-Committee appointed by the Chairman of the Committee, to include, if necessary, persons who are not members of the Committee, was instructed to submit a report on this subject to the next meeting of the Committee, after consulting the competent authorities in the various countries concerned. This Sub-Committee will also consider such problems of international financing as the execution of the above programme may involve, including, if necessary, the constitution of a common fund and the administration of this fund by an appropriate banking institution.

C. Postal Air Transport.

The Committee considers that the study of the question of European postal air transport should be undertaken immediately, to be extended to other regions when economic and technical conditions allow. The Sub-Committee mentioned in paragraph B is instructed:

1. To prepare a map of the air lines to be established between the capitals of the European countries and the points of importance to postal traffic in these countries. For this purpose, it will get into touch with the competent authorities in the different countries.

2. To indicate the necessary conditions for marking out air routes by night.

3. To propose suitable means for increasing the equipment required for ensuring traffic in foggy weather.

4. To draw up specifications of the performance and special qualities required of one or more types of aircraft to be utilised on these lines, taking into account the estimated freight and local topographical and meteorological conditions.

5. To study the question of the surtax.
6. To discuss with the postal services concerned the best methods for handing over mail to aircraft, the distribution of mail, etc.
7. To consider the form which international co-operation should take in the operation of the postal air service, and to study, if necessary, with the competent authorities of the different countries concerned, the sections which might be operated by each.¹⁴

The Special Sub-Committee met in November, 1931, for the first time, and having made a preliminary examination of the proposed "main network," charged its rapporteur, M. Henri Bouché, to prepare a detailed economic study, the basic points of which it had laid down.

The Bureau of the Air Commission of the Disarmament Conference "having thought it desirable, for the study of questions relating to the internationalisation of civil aviation and any other measure calculated to prevent the signatory states from utilising civil aviation for military purposes, to be informed as to the position of the work of the Air Transport Co-operation Committee," the latter met in May, 1932, being immediately preceded by the second session of the Special Sub-Committee. Because the Committee had been urgently convened for the above-mentioned reasons, its agenda had to be limited to questions likely to interest the Air Commission of the Disarmament Conference, the examination of the other questions studied by the Committee since its first session being reserved for a later date. Here was a situation in which persons serving on a committee as private experts were called upon by a conference of governments for technical advice.

The Air Transport Co-operation Committee adopted

¹⁴ *Report of the First Session*, Air Transport Co-operation Committee (Doc. C.395.M.175.1930.VIII), and *Minutes* of same.

the report of the second session of the Special Sub-Committee, with minor modifications; it also adopted three resolutions on different aspects of the international organization of air transport. Several other proposals were not adopted.

At the first session of the Air Transport Co-operation Committee, the question of the establishment of an international company was merely raised in debate. The Committee then endorsed the pool system ¹⁵ in the following resolution:

Considering that the pools system of co-operation between international aviation undertakings has developed satisfactorily,

The Committee:

1. Considers that the present state of legislation, and of economic and political conditions under which civil aeronautics are developing, makes it difficult to reach a more fully developed measure of co-operation:

2. Recommends the Governments and companies to extend and improve the present system by means of bilateral or multilateral agreements aimed to avoid unnecessary competition, increase the economic efficiency of the international air service and develop among the different undertakings a spirit of friendliness which will prepare the ground for closer co-operation.

Less than two years later, the debate at its second session was chiefly devoted to a discussion of the question of an international company. This was no doubt largely because the Committee had been convened at the request of the Bureau of the Air Commission of the Disarmament Conference for the reasons already mentioned. The Air Transport Co-operation Committee was not requested to undertake the study of the internationalization of civil aviation, as such, and did not do so.

¹⁵ See *supra*, Chapter II.

While the resolution adopted by the Committee in 1932 on the "progress of international co-operation in the operation of air lines," did not mention the pool system in so many words, it did not greatly differ in other respects from that adopted in 1930 under the same title. In order, however, to indicate the progress, amid sharp differences of opinion, of the idea of an international company or companies, it has been considered of sufficient interest to reproduce here certain resolutions which were not unanimously adopted. While most, but not all of the members of the Air Transport Co-operation Committee are officials of air administrations, it should be kept in mind that as members of the Committee they do not represent their governments or commit them in any way. In fact, the opinions registered by the various members of the Committee regarding an international company did not always coincide with the stand of government delegates in the Disarmament Conference on the internationalization of civil aviation.¹⁶ This last situation has not always been appreciated. The following resolution, among others, was unanimously adopted by the Committee:

Progress of International Co-operation in the Operation of Air Lines

. . . in order to provide a less precarious legal basis than is at present available for the exploitation of air services, the Committee is of opinion that it would be desirable under present circumstances to conclude bilateral and multilateral agreements with regard to exploitation between the countries concerned, in the hope that these agreements will constitute the basis of increasingly extensive collaboration.

The following proposals gave rise to the declarations inserted after the texts:

¹⁶ See *supra*, Chapter I.

Proposal by M. Fisch (German).¹⁷

Whereas the recent development of international commercial aviation confirms the principles which the Committee accepted in 1930,

And whereas improvements in international communications have been chiefly effected by the conclusion of bilateral agreements concerning the establishment of international lines,

And whereas the difficulties which still remain can to a great extent be surmounted by relying on international Conventions and on the system of national operation of international air lines:

The Committee,

Recommends that Governments should continue and intensify the existing co-operation, particularly by prolonging the duration of international agreements.

Declarations:

(a) The following accepted this proposal:

M. Angström (Swedish), Col. (now, Sir F. C.)
M. Cacopardo (Italian), Shelmerdine (British),
M. Isler (Swiss), M. de Veer (Nether-
M. Molfese (Italian), lands),
M. Oppikofer (German), M. Plesman (Nether-
M. Wegerdt (German). lands),

(b) Mr. Ide (American) accepted M. Fisch's proposal.

(c) We cannot adhere to this proposal because we consider that there is only one method by which international air navigation will be able to develop on rational lines. By this method, the problem of civil aviation co-operation would be regarded as a whole—i.e., freedom of flight combined with the rights of the countries flown over by the system of operation by international companies.

(Signed) Allard (Belgian),
Bouché (French),
Chaumié (French),
Hirschauer (French),
Ruiz Ferry (Spanish).

¹⁷ M. Fisch was then Chairman of the Special Sub-Committee.

(d) M. Sondermayer (Yugoslav) regretted that he could not accept this proposal, being of the opinion:

(1) That the instability of the pool system could never provide a fair and lasting solution for the two fundamental problems of international commercial air traffic, *viz.* (a) freedom to fly over foreign territory, and (b) the rights of States flown over to exercise control over such flights;

(2) That only by (i) the internationalisation of certain commercial lines and (ii) the internationalisation of all services connected with such lines—with the participation on an equitable basis of the various countries concerned—can the difficulties which at present hinder the development of international aviation be overcome.

(e) The difficulty referred to in this proposal is mainly due to the fact that in practice it has often proved impossible to conclude Conventions between the air services of different countries.

The difficulties are not in any way removed by the measures recommended in the proposal.

Consequently, we are unable to support this proposal.

(Signed) Beaurain (Polish),
Filipowicz (Polish).

Proposal by M. Bouché.

The Committee, taking into consideration certain of the indications contained in M. Bouché's statement, notes:

(1) That technical progress alone is not likely to bring air transport soon enough into a position of financial independence;

(2) That this progress is still retarded by the action of political factors which are totally foreign to the economic sphere in question;

(3) That this progress can, on the other hand, be accelerated by general measures of reorganisation agreed upon between States, particularly in the sphere of European activities;

(4) That failing the freedom of the air and pending its establishment, a system of international operation is highly desirable on a basis adapted to the different divisions, *viz.*:

Europe, main inter-continental communications, inter-colonial routes and services.

Declarations:

(a) The following members accepted this proposal:

| | |
|----------------|-----------------|
| M. Allard, | M. Hirschauer, |
| M. Beaurain, | M. Ruiz Ferry, |
| M. Chaumié, | M. Sondermayer. |
| M. Filipowicz, | |

(b) M. Plesman did not accept paragraphs 3 and 4 of the proposal, considering it desirable that these two paragraphs should be replaced by resolution A.2.¹⁸

(c) The undersigned, considering that M. Bouché's proposal introduces, although in other terms, the idea of "international companies" against which they have many times expressed objections of principle, declare that they are unable to accept this proposal.

| | |
|--------------------|--------------|
| (Signed) Ångström, | Oppikofer, |
| Cacopardo, | Shelmerdine, |
| Fisch, | De Veer, |
| Molfese, | Wegerdt. |

(d) M. Ångström and M. Isler made the following observation:

A Committee of Experts can scarcely declare—and in vague terms—in a report intended for publication and after hearing a single statement followed by a cursory discussion, that "general measures of reorganisation can accelerate progress" and that "a system of international operation is desirable." It seems to us that the Committee should not pronounce an opinion on these questions without having studied them in detail.

(e) Mr. Ide refrained from expressing an opinion on this proposal.

In brief, this means that experts of the following nationalities were in favor of an international company, although not always expressed in precisely these words:

¹⁸ The adopted resolution quoted above.

Belgian, French, Polish, Spanish, and Yugoslav; against: American, British, Dutch, German, Italian, Swedish, and Swiss.¹⁹

At the seventeenth session of the Transit Committee, held shortly after the second session of the Air Transport Co-operation Committee, the former, in view of the special conditions necessitating the convening of the Air Transport Co-operation Committee, merely took note of the latter's report.

At the same session, the Transit Committee noted the steps taken by the Chairman of the Committee to establish normal methods of co-operation between the Universal Postal Union and the Transit Organisation, similar to those already existing between the Organisation and all other international bodies dealing with questions of

¹⁹ M. de Brouckère, Chairman of the Air Transport Co-operation Committee and Belgian member of the Air Commission of the Disarmament Conference, speaking in the Air Commission on June 17, 1932, said, in part:

"The Air Transport Co-operation Committee, of which he had been the Chairman, had recently dealt with the question. A large number of the delegates had, from the purely commercial and civil point of view, agreed that it was urgently necessary to attempt internationalisation. A certain number of the delegates of important countries had, on the other hand, refused to consider any steps in this direction.

"The arguments used by the latter had failed to convince M. de Brouckère. Obviously, there were certain drawbacks in internationalisation. Certain commercial interests would not be furthered, nor would certain military interests predominate at the present time. The international firm of 'Mercury, Mars and Co.' was a powerful establishment against which it was difficult to compete. Over and above this, there was the fear of novelty.

"M. de Brouckère understood that certain delegates had declared in the Air Commission that they did not wish the question of civil aviation to be even studied. This attitude had convinced him; a case must be very strong before a Commission could refuse to examine it, and before it applied to it the old and hackneyed formula only too often applied to new truths: 'The question does not arise.' His reply was: 'When the interests of peace are at stake, the question does arise, and must stand.'"

communications. Air mail was of increasing importance. The Council of the League had adopted the following two resolutions on September 19, 1931, and January 28, 1932, respectively:

The Council,

Attaching the greatest importance to the work undertaken by the Communications and Transit Organisation with regard to the international organisation of air transport;

Noting that the Communications and Transit Organisation has never proposed in this connection to deal with exclusively postal problems within the province of the Universal Postal Union, but that, on the other hand, it cannot effectively carry out its work without knowing the requirements of the postal administrations interested in air traffic;

Trusts that direct contact will be established for this purpose without delay between the Universal Postal Union and the Communications and Transit Organisation, and that the methods of co-operation for the purpose of avoiding all duplication which exist between the Communications and Transit Organisation and all the other unions dealing with questions of communications will be applied between the Communications and Transit Organisation and the Universal Postal Union;

Requests the Secretary-General of the League to communicate the Council's views on this subject to the Universal Postal Union through the Bureau of the Union;

Requests the Chairman of the Advisory and Technical Committee for Communications and Transit to take all suitable measures for carrying on the work of the Organisation and to report to the Council, in time for its next session, with regard to the action taken on this resolution.²⁰

The Council,

Having taken note of the letter dated December 17th, 1931, from the Director of the International Bureau of the Universal Postal Union at Berne, and that dated January 7th,

²⁰ *League of Nations Official Journal*, 1931, p. 2265.

1932, from the Chairman of the Advisory and Technical Committee for Communications and Transit;

Noting with satisfaction the progress in the relations between the Communications and Transit Organisation and the Universal Postal Union indicated by the said letter from the Director of the Bureau of the Union;

Greatly appreciating the steps taken by the Chairman of the Advisory and Technical Committee for carrying on the work of the Communications and Transit Organisation in the matter of air transport co-operation, these steps making it possible to avoid all duplication;

Re-asserting its desire that direct relations will as soon as possible be established between the Universal Postal Union and the Communications and Transit Organisation in accordance with the methods of practical co-operation adopted between this Organisation and all the other Unions dealing with communications questions;

Expresses its satisfaction at the intention signified by the Chairman of the Advisory and Technical Committee to associate representatives of the Universal Postal Union in the future work of the Organisation which may be likely to interest the postal administrations;

Expresses its firm confidence that the Governments concerned will make arrangements for the Communications and Transit Organisation to be represented *ad audiendum* at the forthcoming Air Postal Conference which is to be summoned next spring by the Belgian Government.²¹

The Secretary-General of the League is requested to communicate the present resolution to the States Members of the Universal Postal Union.²²

The need of a comprehensive international organization of air transport in Europe has by no means diminished since 1932, despite some progress made under present conditions. During this period, the Transit Organisation has continued its study of economic, legal, and political aspects of air transport, more particularly in the

²¹ The Belgian government did not convene this conference.

²² *League of Nations Official Journal*, 1932, pp. 468-469.

European area, and it has maintained satisfactory relations with all the international bodies interested in the progress of air navigation.²³

*Customs Exemption for Liquid
Fuel Used in Air Transport*

At the third session of the Commission of Enquiry for European Union, held in May, 1931, the German representative raised the question of customs exemption for liquid fuel used by motor vehicles crossing a frontier. In accordance with the resolution adopted by the Commission of Enquiry at the above-mentioned session and approved by the Council on May 22, 1931, the question was referred to the Transit Committee. This Committee, on the basis of the information collected by the Transit Section from the governments which were members of the Commission of Enquiry for European Union,²⁴ decided, on December 1, 1933, to adjourn consideration of this question, particularly in view of the fact that the enquiry which had been held regarding the different forms of traffic showed that, in the present circumstances, the question to be examined by the Committee was essentially one of inland navigation, and the Committee did not think it a suitable time for making an immediate examination of the latter question. It was understood, however, that the Chairman of the Committee could take any necessary action in the matter.

²³ In 1935, a definitive edition of the study of M. Henri Bouché, Rapporteur to the Special Sub-Committee, entitled *Economics of Air Transport in Europe*, was published under the auspices of the Transit Organisation. It has not yet been examined by the Special Sub-Committee.

²⁴ *Comparative Study of the Laws in the Various European Countries Governing the Question of Customs Exemption for Liquid Fuel Used by Motor Vehicles in Traffic by Land, River, Sea and Air* (Doc. No. C.805.M.373.1932.VIII).

As regards more particularly the question of customs exemption for liquid fuel used in air traffic, discussions held by certain international bodies, including the C.I.N.A., later gave the impression that it might be possible to arrive at an international agreement on this subject. Accordingly, the Secretary-General of the League on August 20, 1934, on the proposal of the Chairman of the Transit Committee, requested the European governments to inform him whether they would be prepared to participate in an agreement to be concluded between the governments of the European countries on the basis of the following text, which was the final outcome of the international discussions referred to above:

On arrival, the fuel and lubricants which are contained in the ordinary tanks of the aircraft shall not be liable to Customs or other duties. No quantity, however, may be disembarked free of duties.

On departure, the fuel and lubricants intended for the refuelling of aircraft proceeding to another contracting State are exempt from Customs or other duties. Nevertheless in the case of a landing in its own territory, the State in which the aircraft has obtained its supply may make the granting of the exemption subject to certain specified conditions.

The replies to the inquiry suggest that virtually all European states are favorable to the conclusion of an agreement. The Council decided in January, 1936, in accordance with the Transit Committee's resolution of November, 1935, that the proposed agreement should be opened for signature by European governments.²⁵

²⁵ The scope of the proposed agreement is wider than that contained in the new customs annex to the Paris Convention, which only provides for exemption for fuel and lubricants contained in the aircraft tanks upon arrival. See *supra*, Chapter IV.

INTERNATIONAL LABOUR ORGANISATION

At the thirteenth session of the International Labour Conference, held in 1929, the following resolution was adopted on conditions of labor in air transport: ²⁶

The Conference, bearing in mind the decisions taken on behalf of the seafaring community and the measures framed at previous sessions concerning workers employed in the various branches of sea, inland waterway and railway transport; but

Having regard to the importance and the expansion of air transport, which is developing into a new industry employing numerous categories of workers;

Having regard to the fact that in some countries workers in air transport are grouped in the same organisations as sea transport workers, and that the aspirations of pilots and mechanics in aviation for the improvement of their condition are thus identified with those of seamen and engineers employed on board ship; and

Having regard to the risks to which crews in air transport are exposed and the desirability of regulating internationally the working conditions and the protection of an occupation which has to be carried on in different countries;

Invites the Governing Board of the International Labour Office to consider the desirability of

(a) Undertaking a study notably of the safety, but also of the living, training and working conditions of workers in air transport with a view to including these questions in the agenda of a session of the International Labour Conference, and

(b) Appointing a committee of experts to study questions affecting workers in air transport.

At its forty-seventh session, held in February, 1930, the Governing Board of the International Labour Organisation, after examining this resolution, decided that

²⁶ *Minutes of the Thirteenth Session*, International Labour Conference, Geneva, October, 1929, pp. 433-434.

the Labour Office should undertake the suggested study, but that a committee of experts should not be appointed for the time being.

As early as 1926, the International Chamber of Commerce had submitted to the International Labour Office a draft Convention on the insurance of personnel engaged in international air transport. After the adoption by the International Labour Conference and the Governing Board of the decisions just referred to, the League's Air Transport Co-operation Committee, at its first session held in 1930, decided to examine the question of the insurance of air transport personnel, and invited the International Labour Office to coöperate in such studies.

The International Labour Office realized that while air transport personnel, such as pilots, wireless operators, and mechanics, frequently enjoy favorable salaries, the very character of their profession subjects them to a certain number of disadvantages. Pilots, for instance, whose work is particularly onerous, are permitted to exercise their profession only during a limited number of years, after which they are compelled to give up flight for work connected with the ground organization of air transport, or even for employment in an entirely new field. In Europe, chiefly because of the scarcity of winter services, flying personnel is not always regularly employed the year round. Needless to add, despite the increased safety of regular air transport, pilots are still subject to severe strain and danger.

In undertaking the study foreseen by the International Labour Conference, the Office addressed itself to governments and entered into relations with the C.I.N.A., the C.I.T.E.J.A., and the I.A.T.A. By 1935, the International Labour Office had not completed the study. The "plan for a general study of the working condi-

tions of aircraft crews" includes the following main divisions: preliminary questions, recruitment and professional training, organization of the profession, the contract of employment, special provisions relating to commanding officers, working conditions, occupational risks, and social insurance.

International agreements on different parts of this important problem would remove difficulties at present caused by the conflict or absence of national laws, and would permit the equalization of working conditions in air transport, which requires a highly specialized personnel still relatively limited in numbers.

The International Labour Organisation is necessarily interested in this problem as part of the world problem of social legislation. Viewed from the standpoint of air transport, which is becoming intercontinental to an ever-increasing degree, such an attitude is clearly practical. The United States of America, which became a member of the Organisation in 1934, will no doubt wish to follow closely, or participate in, developments in this division of international social legislation.

CONCLUSION

IN the foregoing chapters an effort has been made to demonstrate that international organization in European air transport, however incomplete, is a reality. It is considered that sufficient evidence has been produced to indicate that, despite the existing difficulties, these being far more often of a political than of a legal or technical character, an authentic and important beginning has been made with such organization. Not even the resurgence of nationalism in recent years could effectively arrest this process of development.

Because this new form of transport, inherently international, appeared rather suddenly at the close of the Great War, it was found necessary, but also not particularly difficult, to establish international public air law, which subsequently influenced national public air law in many countries to a notable degree, even in states not parties to the Paris Convention of 1919. It was at once realized that such international organization could not be confined to a single continent. Of the countries bound by this Convention, a number are extra-European; in addition to these, all the territories administered by contracting parties (including colonies, protectorates, and mandates) automatically fall within the scope of the Convention. Many of the bilateral air agreements entered into between pairs of states, whether European or extra-European (one state or both lying outside the Paris Convention), are modelled closely after the multilateral agreement. The inoperative Ibero-American Convention, to a greater extent than the Pan-American Convention, is almost a replica of the Paris Convention.

Perhaps the most impressive and the most hopeful single development in international air organization up to the present time has been the endowing of the International Commission for Air Navigation (C.I.N.A.) with a wide range of activities and, above all, with the power, which it constantly uses, to amend by a majority vote (binding all the contracting states) the technical regulations annexed to the Convention. The C.I.N.A., too, had an influential part in the preparation of the International Sanitary Convention for Air Navigation established by the International Office of Public Hygiene and is, with the International Office, entrusted with certain duties in the execution of the Sanitary Convention.

As compared with public air law, private air law, because of its very nature, developed in a different manner. Before a serious beginning was made with the unification of private air law, leading national air undertakings, such as Air Union (now part of Air France), Imperial Airways, Royal Dutch Air Lines, and Lufthansa were already operating. A good deal of national private air law had come into existence. By a curious but perhaps significant coincidence, the first international instrument on private air law, the Warsaw Convention for the unification of certain rules relating to international carriage by air, was established exactly ten years, less one day, after the Paris Convention on public air law. A number of both European and extra-European countries are already bound by the Warsaw Convention, including the United States of America, Brazil, and the U.S.S.R. The Rome Conventions of 1933, relating to the unification of certain rules regarding damage caused by aircraft to third parties on the ground, and to the precautionary attachment of aircraft, are not yet in force. Many intricate

problems still remain to be examined by the Comité International Technique d'Experts Juridiques Aériens, which prepares the way for diplomatic conferences on international private air law.

On such vital matters as the establishment of international airways and the creation and operation of air lines, state sovereignty retained and still retains the decisive word. Prohibited zones and corridors of approach are not the only remaining barriers to the freedom of air navigation. However, the manner in which the national air transport companies coöperate within, for example, the International Air Traffic Association, suggests that the requirements of an international or European society, distinct from a purely national society, are beginning to receive still further recognition. At the same time, it is important to bear in mind that each air transport company member of the International Air Traffic Association still relies, in varying degree, upon the national government in question for sustenance. In fact, the very existence of European air transport still depends on the direct and indirect subsidies granted by governments. Until a general disarmament Convention is concluded, under the auspices of the League of Nations, containing provisions for the international control of both civil and military aviation, it is scarcely likely that there will be a more rapid advance towards the coördination of the numerous national air transport undertakings in Europe. An "Air Pact" for mutual assistance, applicable (at any rate at the outset) within a specific area of Europe, would be incomplete if it did not include some measure of "denationalization" in the air transport of the participating countries.

The constitution and experience of the League's Organisation for Communications and Transit enable it to

render important services in the removal of obstacles to the true progress of air transport as a valuable international vehicle. Up to the present time, this organ of the League has taken, on the whole, a less conspicuous part in the direct solution of problems connected with air transport than it has in other fields of its manifold activity. In 1935, an investigation of the economic position of air transport in Europe, the first of this kind, was completed by the Transit Organization. In the same year, it prepared for the conclusion of a League agreement relating to customs exemption for liquid fuel used in international air transport. It is becoming increasingly evident, as was foreseen by the League's Air Transport Cooperation Committee, that a technical uniformity of equipment—in aircraft, engines, and instruments, and in ground organization—is necessary to the welfare of European air transport. The political structure of the United States has made it relatively easy to endow American air transport with such technical uniformity.

Except over the broad spaces of the Union of Soviet Socialist Republics, where internal air lines have an important rôle to play, air transport in Europe is essentially of international concern. There has, nevertheless, been a recent increase in the usefulness of internal lines, chiefly in Germany and, to a growing extent, in Great Britain. Between 1919 and 1932, the commercial air speed in Europe increased by 75 per cent. In 1935, the speed was from 25 to 35 per cent greater than it was three years earlier. The crossing of two or more frontiers in one flight by aircraft of constantly improving performance is now sometimes a matter of minutes. Notwithstanding the economic depression, the frequent absence of services on Sundays and holidays and in winter, the virtual absence of night services, and, above all, the need of greater

safety and comfort in the air, the fact that traffic continues to increase on certain air lines (both on long-established and on new lines) suggests that the air route is gradually ceasing to be regarded in Europe merely as an exceptional means of transport. The British government announced before the close of 1934 that the imperial services would be greatly expanded with a view to carrying by air all first-class mail within the Empire by 1937. One year later, the United Kingdom, the Irish Free State, the United States and Canada jointly agreed to establish a regular Atlantic air service by 1937.

Article 25 of the French Law on commercial air transport, dated December 11, 1932, reads thus: "The State, if it considers that it is preferable to have the line operated by an international organisation, may repeal the charter according to conditions to be laid down by a special law." Although the adoption of this law coincided with the period when the French government initiated a comprehensive air plan in the Disarmament Conference, it is significant that such a clause should figure on the statute books of any great European state.

It is as clear today as it was in the first phase of the Disarmament Conference that an adequate measure of international organization with respect to both civil and military aviation will be reached only when governments are prepared to take the necessary political decisions. Lacking such international organization, the air peril will continue to disturb, or even terrify, the nations, and air transport itself will not have attained that degree of freedom which alone will enable it to serve Europe and the world.

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